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I N D E X.

ACCORD AND SATISFACTION, 65.

ACCOUNTS. See BANK, 11; LIMITATION, 7.

ACCOUNT RENDER.

1. After judgment of *quod computet* confessed by defendant, he is not competent witness as to amount due. *Tutton vs. Adams*, 574.
2. The dismissal of a bill in equity is no bar to this action after a judgment of *quod computet*. *Id.*
3. Auditor should bring the account down to the time of his report. *Id.*

ACTION AT LAW. See HUSBAND AND WIFE, IV., V.; INSURANCE, 15, 20; LIS PENDENS; USURY, 3, 4.

1. May be maintained in England in her own name by widow who has such right by foreign law. *Vanquelin vs. Bouard*, 438.
2. Will lie for tort committed abroad notwithstanding the pendency of proceedings in the foreign country for the same cause of action. *Seymour vs. Scott*, 438.
3. Pendency of another action in relation to same matter. *Marshall vs. Goadby*, 438.

ACTS OF CONGRESS.

1799. See PRIZE.
1800. See PRIZE.
- 1850, July 29th. See MORTGAGE, 43; SHIPPING, 4, 5.
- 1850, Sept. 28. See SWAMP LANDS.
- 1851, March 3. See MINES.
- 1855, Feb. 10, Sect. 2. See ALIEN, 11.
- 1861, July 13. See CONSTITUTIONAL LAW, I.
- 1862, May 20. See CONSTITUTIONAL LAW, I.
- 1862, July 1. See INTERNAL REVENUE, STAMP.
- 1862, July 17. See PRIZE, CONSTITUTIONAL LAW.
- 1863, March 3. See COURTS, 12.

ADMIRALTY.

1. The lien of libellant on the land of the respondent will entitle him to a bill of discovery against respondent and a third person who sets up a claim under a different lien. *Ward et al. vs. Chamberlain*, 53.
2. A decree for the payment of money in an admiralty suit in personam stands in this respect upon the same footing as a decree in equity. *Id.*

ADMIRALTY.

3. Exceptions to commissioner's report must state grounds. So of an answer to a claim. *The Commander-in-Chief*, 693.
4. Objections to want of proper parties. *Id.*
5. Vessels transporting goods are carriers in such sense that the owners may maintain action for cargo lost by collision. *Id.*
6. Decree not reversed for irregularity in language of decision where it is obvious no error has been committed. *Sturgis vs. Clough*, 629.

AGENT. See INSURANCE, 22, 32; TRUST, 4; VENDOR, 1, 16.

1. An agent's liability to his principal for negligence by which a third person has been injured, is only contingent, while it is direct and certain to the party injured. *Dodge et al vs. Bache*, 244.
2. An action against the principal by the party injured is *res inter alios acta* as to the agent, and the record is not admissible in evidence against him, except as to the amount of damages. *Id.*
3. Therefore the rule that excludes an agent from testifying for his principal in such an action, is not founded in clear reason, and should not be extended; and his testimony should not be rejected, except upon the quantum of damages, unless his liability over has been clearly proved. *Id.*
4. Where an agent being specially instructed to contract for a vessel in his own name, afterwards sold her, and put the proceeds in his pocket, the principal's right is gone as against a *bona fide* purchaser. *Calais Steamboat Co. vs. Scudder*, 52.
5. An agent, acting under a general power of attorney to draw or indorse checks, has no authority to overdraw his principal's account at the bank: *Union Bank vs. Mott*, 60.
6. If over drafts are made on such account, by the agent, through a fraudulent collusion with the book-keeper, the loss must fall on the bank. *Id.*
7. Principal liable for fraud of agent, by acts in the course of legitimate business. *Exchange Bank vs. Monteath*, 700.
8. Agent who buys at sale of principal's land by third party, is not trustee of such land for principal. *Kennedy vs. Keating*, 632.

ALIEN.

1. In the absence of any law of the United States governing the particular case, the question whether one born out of the United States is a citizen, is to be determined by the common law, as it existed at the adoption of the Federal Constitution. *Ludlam vs. Ludlam et al.*, 595.
2. At common law, the duty of allegiance and the rights of citizenship passed by descent, the child following the condition of the father; so that if a father out of the realm was within the allegiance of the king, his child by an alien wife was born a subject to the British crown. *Id.*
3. The statute (25 Edw. III., ch. 2) upon this point, is a declaratory, and not an enabling act. *Id.*
4. Whether a citizen is capable of renouncing his allegiance without the consent of his government, or may when his government has not prohibited it, *quare. Id.*
5. But if he may, he cannot divest himself of his citizenship until he becomes the citizen of another government, and this he cannot do until he arrives at full age. *Id.*
6. Where a citizen of the United States went to Peru at the age of eighteen years, with the intention of indefinite continuance there, but took no steps to be naturalized in Peru, or to indicate an intention of a permanent change of domicil, his child born in Peru of an alien wife is a citizen of the United States. *Id.*
7. A finding as of a fact, that the father voluntarily "expatriated" himself, with the intention of becoming a permanent resident of Peru, regarded as immaterial. *Id.*
8. Such a child may, it seems, be subject to a double allegiance, and upon arriving at his majority may elect to retain the one and repudiate the other; but until such election he retains all the rights of citizenship in both countries, though discharging its duties in but one. *Id.*

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9. An alien woman married to an alien in a foreign country and continuing to reside there until her husband's death, did not become a citizen of the United States by the naturalization of her husband subsequent to their marriage. *Burton vs. Burton*, 425.
10. She is, therefore, not entitled to dower under the laws of the state of New York. *Id.*
11. Construction of the Act of Congress 10th February 1855, sec. 2. *Id.*
12. May hold land until office found in Rhode Island. *Cross vs. DeValle*, 630.
13. May sue another in courts of this country on contract made abroad. *Roberts vs. Knights*, 697.

AMENDMENT. See EQUITY, 6.

1. In allowing amendments all legal defences, including those styled unconscionable, stand on an equal footing. *Sheldon vs. Adams*, 503.
2. An amendment will not be allowed that would cut off the defence of the statute of limitations. *Id.*
3. Nor an amendment by which a note liable to be assessed only for losses in one class of hazards, is made liable for all losses. *Id.*

ARBITRATION AND AWARD. See BOUNDARY, 1.

1. Arbitrators under statute cannot award the transfer of specific property. *Brown vs. Evans*, 373.
2. An award which provides for the payment of an amount, after deducting sums not fixed by the award, is invalid. *Fletcher vs. Webster*, 62.
3. On claim to realty is void in New York. *Wiles vs. Peck*, 568.
4. Interest to disqualify arbitrators. *Leominster vs. Fitchburg Railroad Co.*, 505.
5. Presumption in favor of award. *Id.*

ASSAULT AND BATTERY.

Evidence of special damage. *Brown vs. Cummings*, 698.

ASSIGNMENT. See FUTURE ACQUISITIONS; INSURANCE, 26, 39, 42.

A judge's salary is assignable, and a purchaser for value of an assignment to order, properly indorsed, acquires a good title. *State vs. Hastings*, 378.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. Not void for reserving property exempt from execution, without specifying it. *Smith vs. Mitchell*, 248.
2. But it must fairly assign all the assignor's property liable for his debts. *Id.*
3. What evidence admissible on the question of good faith, and of value of property. *Id.*
4. Assignment by railroad company of unpaid subscriptions to stock to secure an indorser for the company, is not an assignment for benefit of creditors. *McBroom and Woods' Appeal*, 309.
5. Assignment in general terms referring to an annexed schedule may include property not named in the latter. *Turner vs. Jaycox et al.*, 318.
6. By partners may provide for payment of private debts out of the residue after paying partnership debts. *Id.*
7. When the conduct of an assignor shows that he still claims and seeks to derive a benefit from the property, to the prejudice of his creditors, it will tend to show that the assignment was originally made with a fraudulent purpose. *Flanigan vs. Lampman*, 183.
8. The fact that the assignor, as agent for one of the creditors, purchased part of the property at the assignee's sale, and afterwards continued in possession of it himself, is evidence of the fraudulent intent. *Id.*
9. Property fraudulently put in the hands of a debtor for the purpose of giving him a false credit, does not vest in the assignee under an assignment. *Audenried vs. Betterly*, 62.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

10. Assignee may maintain trespass against one who interferes with the property. *McQueen vs. Babcock*, 701.
11. Such action is not intermeddling within the terms of an injunction. *Id.*
12. Such injunction is no bar to suit against a sheriff for taking the property out of assignee's hands. Therefore the statute of limitations runs in his favor. *Id.*

ASSUMPSIT. See TENANT IN COMMON, 5.

1. For money had, &c., may be maintained by creditor against one to whom his debtor has delivered money to pay the debt. *Stoudt vs. Hine*, 571.
2. No promise in writing is required, as the Statute of Frauds does not apply. *Id.*
3. Money paid by the putative father of an unborn bastard to the superintendent of the poor upon a compromise, may be recovered back upon its appearing that the supposed mother was never pregnant. *Ruhl vs. Hicks*, 56.
4. Money paid voluntarily, under a mistake of facts, cannot be recovered back. *Brown vs. Rich*, 188.
5. A moral obligation founded upon an antecedent valuable consideration may be sufficient to sustain a promise though the obligation on which it is founded never could have been enforced at law. *Goulding vs. Davidson*, 34.

ATTACHMENT. See BANKS, 20; INSOLVENCY, 3; INTEREST, 2; MUNICIPAL CORPORATION, 3, 4.

ATTORNEY. See COUNSEL; JUDGMENT, 1.

1. Statute of limitations does not begin to run against claim for services, until entry of judgment. *Eliot vs. Lawton*, 566.
2. One who practises in justice's courts, though not licensed attorney, may be within the rules applicable to attorneys. *Freelove vs. Cole*, 638.

AUDITOR. See ACCOUNT RENDER, 3; HUSBAND AND WIFE, 6.

BAILMENT, 321.

BANK. See AGENT, 5, 6; BILLS, 10, 18, 19, 20, 33, 35, 41; CONSTITUTIONAL LAW, II.; CORPORATION.

1. There is no implied contract to pay the President for his services. *Sawyer vs. Pawner's Bank*, 249.
2. A debtor sued by bank, cannot plead acts by which the latter has forfeited its charter. Such forfeiture can only be enforced by the State in a direct proceeding. *Farmers' Bank vs. Garten*, 634.
3. The counting out of money to the person presenting a check, passes the property in the money to the latter, and cannot be revoked. *Chambers vs. Miller*, 439.
4. If a banker denies the right of a depositor, by placing the deposit to credit of another person he is presently liable to action for the amount. *Carroll vs. Cone*, 319.
5. So where he voluntarily counts out the amount of the deposit and hands it to a sheriff to levy upon. *Id.*
6. The money so counted out was his own property and not his depositor's. *Id.*
7. Charging of interest on customer's accounts. *Crosskill vs. Bower*, 438.
8. Cannot refuse to allow income tax to a customer, upon interest accruing on a mortgage security. *Mosse vs. Salt*, 439.
9. The discounting of bills when the customer's account is overdrawn makes the bank a holder for value. *In re Carew*, 439.
10. If bank takes a mortgage security from a customer for a fixed sum owing by the latter, the relation of banker and customer ceases as to that sum. *Mosse vs. Salt*, 442.
11. Habitual mode of making out an account is evidence of an agreement that it should be so made. *Mosse vs. Salt*, 439.

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12. In the absence of special agreement, express or implied, the custom of bankers may be proved. *Mosse vs. Salt*, 439.
13. Disputed entry in pass-book is for the jury. *Snead vs. Williams*, 442.

BASTARD. See ASSUMPSIT, 3.

BILLS AND NOTES. See AMENDMENT, 3; BANK, 9; LIMITATION, 5, 6; MECHANIC'S LIEN, 1; MORTGAGE, 6, 19, 20; NEGOTIABLE BONDS; USURY, 7.

I. *What amounts to.*

1. Note payable "subject to the policy" not negotiable. *Bank vs. Blanchard*, 567.
2. Instruments amounting to. *Cory vs. Davis*, 439. *Watson vs. Evans*, 440.

II. *Consideration.*

3. The issuing of a policy, by an insolvent company, is a good consideration for a note given for the premium, if the insolvency was not known at the time. *Lester vs. Webb*, 62.

4. One who signs as principal a promissory note, which has already been delivered and accepted, is not liable thereon, without proof of a new consideration. *Green vs. Shepherd*, 62.

5. Note payable on alternative condition. Consideration to give a scholarship in another institution. *Genesee College vs. Dodge*, 570.

III. *Liability of Parties.*

6. One who takes a promissory note without consideration takes it subject to all its infirmities in his assignor's hands. *Harpham vs. Haynes*, 313.

7. Indorsee even with notice takes a note subject only to such equities as attach to the instrument itself. *Mattoon vs. McDaniel*, 634.

8. Indorser of blank note cannot object as against a *bona fide* holder for value that the blanks have been improperly filled. *Farmers' Bank vs. Garten*, 634.

9. A signing on condition which is not fulfilled is no defence against a *bona fide* holder for value. *Watson vs. Russell*, 440.

10. Where a note is signed as cashier, parol evidence allowed to show of what bank. *Baldwin vs. Bank of Newbury*, 629.

11. Personal liability for note signed as secretary. *Bottomley vs. Fisher*, 440.

12. Liability for note signed by agent in own name. *Brown vs. Parker*, 567.

13. Suit in equity against acceptor of a lost bill. *Edge vs. Bumford*, 441.

14. Notice by surety to holder of note not yet due, to sue as soon as it should become due, will not discharge him. *Hellen vs. Crawford*, 310.

15. Indorsee of bills given for debt but not accepted in absolute payment has no right of action against the debtor except upon the bills. *Battle vs. Coit*, 700.

A note given in pursuance of an illegal agreement, but not made void by the statute may be recovered on by a *bona fide* receiver for value. *Chesbrough vs. Wright*, 444.

17. But one who takes the note in part payment of a precedent debt is not such receiver for value. *Id.*

IV. *Title to a Note.*

18. Bank receiving note for collection has no better title than the remitting bank unless it becomes a purchaser for value without notice. *McBride vs. Farmers' Bank*, 636.

19. Having a balance against the remitting bank and refraining from drawing it, or discounting notes for the latter, do not make the bank such purchaser. *Id.*

20. Remitting bank having demanded the note and afterwards the proceeds, assigned its demand. The assignor may maintain an action without new demand, although the assignment was made to obviate the objection to an attachment by a non-resident. *Id.*

21. Receiver of unindorsed note has no better title than the person from whom he received it. *Whistler vs. Foster*, 440.

BILLS AND NOTES.

22. Indorsement of note to two persons, with delivery, vests a valid title in both, although one was absent at the time, and they may maintain a joint action upon it. *Flint et al. vs. Flint*, 120.

23. Where a guaranty of a note is a separate instrument, title to it will pass by delivery with the note, for a good consideration. *Gould vs. Ellery*, 59.

24. Where J. made a contract for the sale of C.'s promissory notes to L. when he was not the owner nor in possession, it was held, that there was no implied warranty of title, and that the subsequent acquisition of it by J. did not enure to the benefit of L. so as to render a payment by C. to him good, and an extinguishment of the note. *Scranton vs. Clark*, 125.

V. Payment.

25. On a note payable in specie plaintiff can only recover the face with interest, though specie be at premium. *Wood vs. Bullens*, 373.

26. Renewal note retained by the payee, is satisfaction, under the circumstances, of the first. *Sage vs. Walker*, 765.

27. An indorser who takes up a note and gives a new one of his own for it, has a right to regard this as a payment as between him and his principal. *Wilkinson vs. Stewart*, 313.

VI. Demand and Notice.

28. An express company contracted in Indiana, to present a bill drawn and indorsed by parties in that state, and accepted payable in New York. The bill was placed in the hands of a competent notary in New York a day before its maturity, and was, on that day, presented and protested, whereby the indorsers were discharged. On suit brought against the express company for their neglect, it was urged that the contract of the company was performed when the bill was put into the notary's hands. This question examined, but not decided. *American Express Co. vs. Dunlevy*, 266.

29. The express company, by delivering the bill to the notary on the day before its maturity, had made that officer their agent to hold and collect the paper. This employment had nothing to do with the notary's official character. On this ground the express company is liable. *Id.*

30. The measure of damages is the face of the bill and interest. *Id.*

31. Foreign bill must be protested by a notary. *Note to American Express Co. vs. Dunlevy*, 271.

32. A bill drawn in one state payable in another is a foreign bill. *Id.*

33. Liability of persons receiving bills on deposit, for transmission or collection. *Id.*

34. For purposes of protest a collecting agent is a holder. *State Bank vs. Bank of the Capital*, 701.

35. Bank acting as collecting agent merely need only notify its immediate principal or indorser. *Id.*

36. Its undertaking to notify other parties is not sufficient evidence of agreement to notify all. *Id.*

37. Holder of note as collateral must present it at maturity. *Peacock vs. Percell*, 440.

38. Presentment at the place of date is sufficient, in absence of proof that the holder knew the maker resided elsewhere. *Smith vs. Philbrick*, 187.

VII. Grace.

39. Maker has the whole of the last day of grace to pay in, without regard to banking hours. *Smith vs. Aylesworth*, 254.

40. Maker has all the last day of grace, though he may have refused payment during the day. *Oothout vs. Ballard*, 444.

41. It is immaterial whether the note is payable at a bank or at large. *Id.*

BOUNDARY.

1. An oral award by referees, under an oral submission, is competent evidence upon a question of disputed boundary between the parties. *Byam vs. Robbins*, 120.

2. Oral agreement as to, uncertain. *Proprietor vs. Prescott*, 698.

BOUNTY.

Offered to volunteers is payable to drafted men allowed to volunteer for a period longer than the draft called for. *People vs. Hammond*, 249.

CALIFORNIA LAND CLAIMS. See **DEED**, 9, 10; **MINES**.**CASES AFFIRMED, OVERRULED, ETC.**

Aymar vs. N. River Bank, 3 Hill 263, affirmed. *Exchange Bank vs. Monteath*, 700.

Bloomer vs. McQuewan, 11 Howard 549, approved. *Bloomer vs. Millinger*, 695.

Bush vs. Steinman, 1 Bos. & Pull. 404, rejected as authority. *Painter vs. Pittsburgh*, 350.

Chaffee vs. Boston Belting Company, 22 Howard 223, approved. *Bloomer vs. Millinger*, 695.

Hawley vs. James, 5 Paige 442, distinguished. *Cross vs. De Valle*, 630.

Langdale vs. Briggs, 39 E. C. L. R. 214, followed. *Cross vs. De Valle*, 630.

Lorillard vs. Coster, 5 Paige 172, distinguished. *Cross vs. De Valle*, 630.

Noonan vs. Lee, 2 Black 499, recognised. *Orchard vs. Hughes*, 694.

Parker vs. Kane, 4 Wisc. 1, approved. *Howell vs. Howell*, 378.

Rex vs. Horwell, 6 Carr. & P. 148, distinguished. *People vs. Clements*, 570.

Scribner vs. Fisher, 2 Gray 43, dissented from. *Baldwin vs. Hale*, 462.

United States vs. West's Heirs, reviewed. *United States vs. Galbraith*, 51.

Wennall vs. Adney, 3 Bos. & Pull. 252. Note to, commented on. *Goulding vs. Davidson*, 34.

Wheaton vs. Hibbard, 20 Johns. 290. Dictum of **SPENCER**, C. J., overruled. *Porter vs. Mount*, 493.

CERTIORARI.

1. A common law certiorari, sued out after the time for a statutory appeal which would have given the same remedy, will be quashed. *Farrell vs. Taylor*, 249.

2. The allowance of the writ in such case is not binding on the court. *Id.*

CHAMPERTY.

Purchase of legacy for less than its value from one too poor to sue, is not. *Tyson vs. Jackson*, 441.

CHECK. See **BANKS**, 3; **CRIMINAL LAW**, V.

A creditor who has received from his debtor, a check upon a bank, cannot return the same to the drawer, and sue upon the original cause of action, without first demanding payment; and presenting the check to the bank to be certified, is not equivalent to a demand of payment. *Bradford vs. Fox*, 61.

CITIZEN. See **ALIEN**.**COMMON CARRIER.** See **ADMIRALTY**, 5; **NEGLIGENCE**, 11; **RAILROAD**, II.

1. The ticket of a passenger includes also ordinary baggage but not merchandise. *Smith and Wife vs. The Boston and Maine Railroad*, 127.

2. Not liable for loss of merchandise brought with him by a passenger as baggage. *Cahill vs. London, &c., Railroad Co.*, 441.

3. Is bound to deliver goods within a reasonable time, having reference to his means of carrying. *Hales vs. London, &c., Railroad Co.*, 441.

4. Liable for injury to passenger by defect of vehicle, though it was not discoverable by any practicable mode of examination. *Alden vs. New York Central Railroad Co.*, 498.

5. Condition that shipper assumes the risks of carrying does not relieve carrier from ordinary liability. *Falvey vs. N. T. Co.*, 379.

6. Cannot by a general notice exonerate himself entirely from legal liability. *Judson vs. Western Railroad Co.*, 316.

7. A carrier having a lien on goods for freight, &c., cannot sell the goods to enforce his lien. Measure of damages where he does. *Briggs vs. Boston, &c., Railroad Co.*, 250.

COMMON CARRIER.

8. May be liable as forwarding agent only beyond his own route. *N. R. R. Co. vs. Fitchburg Railroad Co.*, 250. *Briggs vs. Boston, &c., Railroad Co.*, 250.

CONFLICT OF LAWS. See CONTRACT, 2; HUSBAND AND WIFE, 2; INSOLENCE, 1-3; LIMITATION, 1, 2.

1. Questions of procedure are to be determined by the *lex fori*. *MacFarlane vs. Norris*, 442.
2. *Semble*, that set-off is matter of procedure. *Id.*

CONSTITUTIONAL LAW. See COURTS, 1, 12; MUNICIPAL CORPORATION, 21.

I. *Questions arising out of the Rebellion*. See INSURANCE, 37, 38.

1. The Act of Congress of 13th July 1861, and the President's Proclamation of 16th August 1861, recognised an insurrection amounting to civil war, as existing in the state of Tennessee, but did not put in force against the people of that state all the rights and privileges conferred on the National Government by the laws of war. *Allen vs. Russell et al.*, 361.

2. The expression "commercial intercourse" in the Act of 13th July 1861, is to be considered as limited by the specifications in the act. *Id.*

3. Therefore, where a partnership of three persons existed in Kentucky, and two of them, being disloyal, became residents in a rebellious state, and there, after the Act of Congress of 1861 and the President's Proclamation, made a deed of assignment of the partnership property to a creditor in Kentucky, for the purpose of securing his and other debts due by them to persons in a loyal state, the making of such deed was not such "commercial intercourse" as is within the prohibition of the Act of Congress and the President's Proclamation. *Id.*

4. Nor is it material that the creditor went into the rebellious state for the purpose of procuring such deed, and brought it to Kentucky. The deed was not an article of commerce within the Act of Congress and the President's Proclamation. *Id.*

5. By the laws of war the partnership was dissolved, but the third and loyal partner was not a surviving partner. The others were not civilly dead, and no conviction of treason having ensued, their right of property still remained and passed under their deed. *Id.*

6. By the Act of Congress of 13th July 1861, and the President's Proclamation in pursuance thereof, citizens of the rebellious states have *prima facie* become for purposes of commerce *quasi* enemies and cannot sue in the United States Courts. *United States vs. 100 Barrels*, 734.

7. But the granting of a license to trade restores the standing of the grantee so as to enable him to be heard in the United States Courts. *Id.*

8. The act of foreign nations in recognising the so-called Confederate States as a belligerent, estops their subjects from disputing the lawfulness of captures on the high seas by the United States forces. But such recognition has no influence on the Courts of the United States, who are guided solely by the action of the political department of their own government. *Id.*

9. Therefore in determining the status of rebel persons and property, the courts are guided by municipal and not by international law. *Id.*

10. The Acts of Congress of 13th July 1861, and 20th May 1862, are prohibitory acts, and the forfeiture under them of goods "proceeding to" rebellious states can only be avoided by the production of such a license as is provided in the acts. Therefore a license obtained through error, or mistake, or fraud, will not prevent the forfeiture. *Id.*

11. The Act of Congress of July 17th 1862, applies to suits for the recovery of debts in the state as well as the Federal Courts. *Norris vs. Doniphan*, 471.

12. If the act is unconstitutional, Congress has no power to prohibit the state courts from giving to the owners of property seized the relief to which they are entitled by the laws of the states. *Id.*

13. The forfeitures or confiscations proposed by this act are to be effected on account of offences which the owner may commit, without reference to the use of his property; hence, the doctrine that property which is used to

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violate a blockade, or revenue laws, may be forfeited by proceedings *in rem*, without conviction of the owner, has no application to this case. *Norris vs. Doniphon*, 471.

14. That clause of the Constitution which authorizes Congress "to declare war," &c., relates only to wars with foreign nations. *Id.*

15. The right given by the Constitution to make war upon rebels, gives the power to perform acts of war, and no other power whatever. The seizure and confiscation of enemies' property on land are not acts of war. *Id.*

16. The Constitution, and not the law of nations, governs the relations between the Government and citizens of the United States. They, though traitors, must be dealt with according to the Constitution. *Id.*

17. The act under consideration is unconstitutional. *Id.*

18. A person joining the rebellious states, and residing therein, cannot on common law principles maintain an action in the courts of the United States or of the loyal states. *Id.*

II. *United States Notes, Stocks, and Loans.* See GROUND-RENT, 2.

19. The Legislature of New York, by an act of 1863, provided that banks shall be liable to taxation on a valuation equal to the amount of their capital stock *paid in, or secured to be paid in*, and their surplus earnings less 10 per cent., deducting the value of their real estate. *Held*, that the meaning of the words "capital stock paid in, or secured to be paid in," is the original capital of a bank, as distinguished from that which it possesses when a given tax is laid. *The People vs. Commissioners of Taxes*, 535.

20. The Bank of C. having had a capital actually paid in of \$750,000, had invested about one-fourth of it in real estate, and the balance in the securities of the United States. *Held*, that the bank was properly taxed, under the state law, on the whole amount of its original capital. *Id.*

21. The act in question does not conflict with the constitution of the state, or of the United States. *Id.*

22. Power of states indirectly to tax United States securities. *Note to People vs. Commissioners of Taxes*, 558.

III. *Interference with State Laws.*

23. A license under Act of 1862, c. 119, does not authorize the sale of liquors in violation of a state law. *Commonwealth vs. Thornily*, 373.

IV. *Questions concerning the Executive.* See *infra*, V.; MANDAMUS, 7.

24. The governor of a state cannot be coerced by *mandamus* to perform an official duty. *People ex rel. Harless vs. Secretary of State*, 314.

25. The constitution of Illinois allows the Governor the full period of ten days of twenty-four hours each, excluding Sundays, and not simply ten legislative days, in which to return bills which he does not approve. *Id.*

26. The Secretary of State cannot be called upon to determine whether a bill is or is not a law. *Id.*

27. The power of the Governor to adjourn the legislature in case of disagreement between the two houses. *Note 2 to People vs. Auditor, &c.*, 346.

28. Power of courts to review the action of the executive of a state. *Note 1 to People vs. Auditor, &c.*, 343.

29. The certificate of the Speaker of a House of Representatives, as to the attendance of a member of the house, is not conclusive on the Auditor of State. *People ex rel. Harless vs. The Secretary of State*, 314.

V. *Questions concerning the Legislature.* See *ante*, 27; COURTS, 1; MANDAMUS, 3.

30. Where the constitution requires the legislature to keep a journal of its proceedings, parol evidence of such proceedings cannot, it seems, be admitted. *People ex rel. Harless vs. Secretary of State*, 314.

31. If the members of a legislature disperse and abandon the capital, it is a practical "adjournment" of the body, though no entry thereof is made upon the journals. *Id.*

32. If the executive makes an order for the adjournment of a legislature

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without the happening of the contingency which would authorize such order, yet if it is acquiesced in and the members accordingly disperse, the session is terminated notwithstanding the order may be illegal. *People vs. Secretary of State*, 314.

33. After a session is terminated in any mode it cannot be resumed at a future day at a time not fixed by law, without a previous vote of the two houses or by due proclamation by the governor, unless, perhaps, in case where the body is dispersed by sudden insurrection or external force. *Id.*

34. The conclusiveness of legislative journals as to legislative proceedings. *Note 1 to People vs. Auditor, &c.*, 343.

35. If the Constitution provide for the adjournment of the legislature by the Governor, in case of a disagreement between the two houses as to the time of adjournment, and the Governor, claiming that the contingency has arisen, by proclamation declares the houses adjourned, and the latter acquiesce in that act, abandon the capital, draw their pay, and return to their homes, such acquiescence and dispersion constitute an adjournment of the legislature in fact, whether the act of the Governor was rightful or wrongful; and the members cannot resume their session, unless legally convoked again by the Governor. *People ex rel. Keyes vs. Auditor*, 332.

36. When the legislative and executive branches of the government, by the adoption of an act, give a construction to the constitution, if the construction thus given is only doubtful, the courts will not hold the act void. *Id.*

37. The power of a legislature to enforce the attendance of absent members is plenary, and, may, if necessary, be enforced by *posse civitatis*. *Id.*

38. The Constitution as applied to the legislative department of the government is a restriction and not a grant of power: and it is competent for the legislature to prescribe the qualifications of electors and the time, place, and manner of exercising the elective franchise, when not expressly prohibited from so doing, or where the prohibition is not implied from some express provision of the Constitution. *Morrison vs. Springer*, 276.

39. The Constitution of Iowa does not prescribe the place of exercising the elective franchise, that is left with the legislature. Hence an act allowing electors in the military service to vote out of the state is constitutional. *Id.*

40. The Supreme Court will declare a law unconstitutional only when it is clearly, palpably, and plainly inconsistent with the provisions of that instrument. *Id.*

VI. *Obligation of Contracts.*

41. A state legislature may constitutionally pass an act that if a defendant is in the actual military service of the United States, a *pro* *action* against him in the courts of such state, shall stand continued during the period of his actual service. *McCormick vs. Rusch*, 93.

42. An act which interposes such obstacles to the enforcement of certain mortgages, as to leave the creditor without substantial remedy, impairs the obligation of contracts and is void. *Oatman vs. Bond*, 377.

43. Legislature cannot prohibit a city from levying a tax sufficient to pay judgments against the city. *Wisconsin vs. Madison*, 377.

44. Distinction between statutes that impair the obligation of contracts, and those which operate on remedy only, discussed. *Note to McCormick vs. Rusch*, 93.

VII. *Trial by Jury.*

45. An act requiring the reference of all actions of a particular kind to an individual to take testimony, is unconstitutional. *Oatman vs. Bond*, 377.

VIII. *Taking Private Property without Compensation.*

46. An act authorizing proprietors of a mill-dam to flow lands of other persons, without any provision for compensation, except as ascertained by verdict in an action of trespass, is unconstitutional. *Newell vs. Smith*, 378.

47. A purchaser of land so flowed, for which no compensation has been made, may recover for the maintenance of the dam after his purchase. *Id.*

CONTRACT. See BANK, 1; COVENANT; LIEN, 1; LIMITATION, 1, 2; RAILROAD, 4; VENDOR.

I. Interpretation and Construction.

1. Representations and statements. *Behn vs. Burness*, 442.
2. In an action where the question at issue relates solely to the effect of the transaction at the place where it was entered into, the liability of the defendant is to be determined by the *lex loci contractus*. *Scott vs. Pilkington*, 442.
3. The Statute of Frauds does not require a promise to be in writing when it is in effect to pay the promisor's own debt, though in form it is a guarantee of that of another person. *Malone vs. Keener*, 312.
4. Subscription paper to pay to Treasurer—failure to elect on the day appointed. *Wayne, &c., Institute vs. Greenwood*, 190.
5. One who advertises a reward for information is liable at common law, and the Statute of Frauds does not apply. *Williams vs. Byrnes*, 627.
6. Parties engaging an inventor to perfect a machine, have no claim for improvements conceived by him after expiration of the contract. *Appleton vs. Bacon*, 54.
7. An agreement to "cancel" an indebtedness is an agreement to pay it. *Auburn City Bank vs. Leonard*, 254.
8. To put a party in command of a boat does not include keeping him there. *McKee vs. Kinney*, 634.

II. Consideration.

9. Service in procuring legislation by personal influence not a legal consideration. *Frost vs. Belmont*, 374.
10. Mutual subscriptions of money to be paid to a trustee for some common object are a legal consideration. *Underwood vs. Waldron*, 183.

III. Performance.

11. Where the subject-matter is destroyed before the time for performing the agreement, the parties are discharged from the contract. *Taylor vs. Caldwell*, 442.
12. One who has agreed to build a house upon the land of another, but before he has completed it, it is destroyed by fire, is liable to an action for money advanced on the contract, and damages for its breach. *Tompkins vs. Dudley et al.*, 56.
13. Action under contract to build—recoupment for failure to complete in time. *Wagner vs. Corkhill*, 319.
14. An employee dismissed before his time expires is *prima facie* entitled to recover for the whole time. *King et al. vs. Steiren*, 310.
15. Defendant may give evidence in mitigation of damages. *Id.*
16. Under a contract for wages to continue one year notwithstanding the death of the employer, reasonable services are due to the latter's executors. *Burdett vs. Yule et al.*, 249.
17. Compensation under special contract where the employee dies, is to be measured by the contract. *Clark vs. Gilbert*, 699.
18. Specific performance decreed where party had failed in his part of contract on account of mistake. *Todd vs. Taft*, 697.

IV. In Restraint of Trade.

19. A limit of two hundred miles may not be unreasonable. *Harms vs. Parsons*, 627.
20. Soliciting orders for another not a breach. *Clark vs. Watkins*, 627.
21. Nor lending money to a person in the trade in question, on mortgage of his trade-premises. *Bird vs. Lake*, 627.
22. Nor fitting up houses and selling them for the purposes of such trade. *Id.*

V. Parol Evidence to affect Written. See BILLS, 10; INSURANCE, 12, 17.

23. A warranty that a machine shall be capable with "a good team" of cutting a certain amount of grain, contains a *patent ambiguity*, yet it may be explained by parol evidence. *Ganson vs. Madigan*, 508.
24. *Auburn City Bank vs. Leonard*, 254.
25. *Bloomer vs. Millinger*, 695.

CONTRACTOR. See **NEGLIGENCE**, 1-5.

CONTRIBUTION. See **MORTGAGE**, 3, 15, 16.

CONVERSION. See **DECEDENT**, 1; **INSURANCE**, 29; **TENANT IN COMMON**; **TROVER**.

COPYRIGHT.

1. A bookseller's sale catalogue containing original descriptive annotations is a proper subject of copyright. *Hotten vs. Arthur*, 306.
2. Copy of picture by photography is infringement. *Gambart vs. Ball*, 628.
3. Publication of drama containing scenes of a novel copied verbatim, is infringement. *Tinsley vs. Lacy*, 628.
4. Injunction granted without proof of actual damage. *Id.*

CORONER.

Not liable for words spoken by him to his jury. *Thomas vs. Churton*, 628.

CORPORATION. See **MORTGAGE**, 26-30; **MUNICIPAL CORPORATION**; **NEGOTIABLE BONDS**; **PARTNERSHIP**, 4; **RAILROAD**.

I. *Acts and Powers.*

1. A corporation has power to mortgage its franchises with its other property, to secure its liabilities. *Morrill et al. vs. Noyes*, 18.
2. The directors of a company having directed a claim to be transferred to certain persons by the "proper officers," it was presumed that such officers were the president and secretary. *Carroll vs. Cone*, 319.
3. An instrument to be the deed of a corporation must be sealed with the corporation seal and by the proper officer. Burden of proof as to the sealing. *Koehler vs. Black River Co.*, 55.

II. *Directors and Stockholders.*

4. The officers and directors of a corporate body are trustees of the stockholders, and in securing to themselves an advantage not common to all the stockholders, they commit a plain breach of duty. *Koehler vs. Black River Falls Iron Co.*, 56.
5. A minority of the stockholders of a corporation may maintain a bill in equity against it, on behalf of themselves and the others, for conspiracy and fraud. *Peabody vs. Flint et al.*, 120.
6. Personal liability of directors of insolvent corporation. *Seymour vs. Sturgess*, 498.

III. *Receiver.*

7. A receiver is so far under the protection of a court of equity, that the property in the possession of the company which he has obtained the charge of, under his commission, will be deemed "*pendente lite*" to be rightfully in his possession, and trover will not lie for the same. *Morrill vs. Noyes*, 18.
8. The claim for dividends improperly declared by an insolvent banking corporation, belongs to creditors, and not to the receiver, and the right of action is in them. *Butterworth vs. O'Brien*, 60.

IV.

9. Liability of subscribers to stock. *Seymour vs. Sturgess*, 498.
10. New York Act of 1845, in relation to suits against a foreign. *Id.*

COUNSEL.

1. Party is liable for services of senior counsel. *Brigham vs. Foster*, 698.
2. How fees may be estimated in special cases. *Frost vs. Belmont*, 374.

COURTS. See **CONSTITUTIONAL LAW**, I., 28, 36, 40; **MORTGAGE**, 25.

I. *Courts in general.*

1. Have no power to compel the legislature to execute a trust of municipal not fiduciary character. *Supervisors vs. Burchell*, 631.
2. Judgment of a foreign court conclusive on the merits. *Lazier vs. Westcott*, 501.
3. Courts will take judicial notice of the existence and authority of officers of a colonial government without certification by the imperial authorities. *Id.*

COURTS.

4. A transaction valid by the decisions of the court at the time, will not be invalidated by the court's subsequent overruling of its decisions. *Gelpcke vs. Dubuque*, 629.

5. Where a statute authorizes any person in possession of real property, to institute a suit against one who claims an adverse interest therein, the judgment of a court in such suit is conclusive on title of both parties. *Lessee of Parrish vs. Ferris*, 54.

6. Finding of facts by Supreme Court of New York and review by the Court of Appeals. *Phelps vs. McDonald*, 500.

7. Judgment of Oyer and Terminer—Review in Court of Appeals—how the writ of error should be addressed. *Hartung vs. The People*, 500.

II. Courts of the United States.

8. The Supreme Court of the United States will not necessarily follow the latest decisions of state courts on the law of their own states. *Gelpcke vs. Dubuque*, 629.

9. Power of the Supreme Court of the United States to revise the proceedings of the Circuit Court, is confined to the questions stated in the certificate. *Ward et al. vs. Chamberlain et al.*, 53.

10. Judgments of the courts of the United States are liens in all cases where those of state courts in similar cases are. *Id.*

III. State Courts.

11. The courts of the several states are foreign courts as to each other. *Smith et al. vs. Lathrop et al.*, 107.

12. State courts have no power to issue a writ of *habeas corpus*, or to continue proceedings under it when issued, in cases of commitment or detention under the authority of the United States. *Matter of Hopson*, 189.

13. A controversy in which no right is claimed under the Constitution or laws of the United States is exclusively within the jurisdiction of the state courts. *Congdon et al. vs. Goodman*, 54.

14. The legal presumption is in favor of the jurisdiction of a court of record of another state, which has assumed to exercise it. *Buffum vs. Stimpson*, 64.

16. Where bonds and coupons made in Ohio are payable in New York, the courts of New York will have jurisdiction of an action on the bonds, though both parties are foreign corporations. *Connecticut Ins. Co. vs. Cleveland, &c., Railroad Co.*, 443.

COVENANT. See **ESTATE**, 3; **ESTOPPEL**, 3; **RELEASE**, 1.

1. Where a trust estate is sold in plots for building, with restrictive covenants, each purchaser has an equity against the other to enforce the covenants. *Eastwood vs. Leaver*, 693.

2. Such equity may be lost by acquiescence. *Id.*

3. Parties to suit to enforce such equity. *Id.*

4. To use a house as dwelling only. *Wilkinson vs. Rogers*, 692.

5. Breach of such covenant. *Id.*

6. Not to let house as a hotel. *Jay vs. Richardson*, 692.

7. To bequeath money not satisfied by a bequest in will. *Graham vs. Wickham*, 628.

8. Nor by appointment under a power to appoint to children. *Id.*

CRIMINAL LAW. See **COURTS**, 7.**I. Confessions.**

1. Confessions made after conversations advising a confession, and not expressly promising to prevent a prosecution, admissible in evidence. *Commonwealth vs. Tuckerman*, 184.

II. Bawdy House.

2. Evidence in indictment for keeping. *Harwood vs. The People*, 499.

III. Burglary.

3. Indictment for breaking with intent, &c., need not state what kind of felony was intended. *Mason vs. The People*, 499.

CRIMINAL LAW.

4. In tenement house the door of each room or suite is an outer door.
Mason vs. The People, 499.

IV. *Embezzlement.*

5. Money of a corporation received by treasurer, and deposited in bank, to his credit as such, is the property of the corporation, and if he converts it to his use it is embezzlement. *Commonwealth vs. Tuckerman*, 184.

6. Admission of evidence of other similar acts to show intent. *Id.*

V. *Forgery.*

7. A certified check is an entire instrument, and an indictment need not specify that the forgery was of the certification. *People vs. Clements*, 569.

8. Altering signature on party's own check to defraud bank, is not. *Brittain vs. Bank of London*, 693.

9. False entry in banker's pass-book. *Reg. vs. Smith*, 693.

VI. *Larceny.*

10. Taking of money given for purpose of having a ticket procured. *Reg. vs. Thompson*, 693.

11. Detaining check from the finder. *Reg. vs. Gardner*, 693.

VII. *Murder.*

12. Sufficiency of averment. *Evans vs. People*, 184.

VIII. *Polygamy.*

13. Burden of proof of divorce as defence to indictment for second marriage is on defendant. *Com. vs. Boyer*, 568.

IX. *Seduction.*

14. Evidence in action for. *Kenyon vs. The People*, 569.

CURRENCY.

- Means bank bills, &c., which pass as and for coin. *Springfield, &c., Ins. Co. vs. Tincher et al.*, 312.

DAMAGES.

See BILLS AND NOTES, 25, 30; COMMON CARRIER, 7; CONTRACT, 15, 17; FALSE IMPRISONMENT, 1; INSURANCE, 14, 29; NEGLIGENCE, 8; RAILROAD, 9, 12; SHERIFF, 4; TROVER, 2, 3.

In an action for wilfully injuring a mine, the measure of damages is the actual injury by delay, loss of time, &c., but not merely speculative profits. *McKnight vs. Ratcliff*, 311.

DEBT.

See GROUND-RENT, 1.

No defence that the debt arose from receipt of worthless bills, where defendant did not suffer from them. *Orchard vs. Hughes*, 694.

DEBTOR AND CREDITOR.

See CORPORATION, 8; DEED, 1, 3; HUSBAND AND WIFE, 24, 25; INSOLVENCY, 1-3; INSURANCE, 1, 2; MORTGAGE, 2, 5; PARTNERSHIP, 2.

DECEDENT'S ESTATE.

See INSURANCE, 27, 28; WILL.

1. Direction to sell land, convert it into money, and invest it till the time fixed for distribution, is an equitable conversion into personalty. *Johnson vs. Bennett*, 123.

2. Purchase by agent of administrator at sale of decedent's real estate, is void. *Forbes vs. Halsey*, 500.

3. Evidence to give a surrogate jurisdiction to order sale of real estate of decedent. *Id.*

DEED.

See CORPORATION, 3; EQUITY, 5; HUSBAND AND WIFE, 18; STAMP; TENANT IN COMMON, 3.

1. A money consideration recited in a deed is *prima facie* the true one, but a judgment-creditor may rebut the presumption. *Amsden vs. Manchester*, 318.

2. Marriage is good consideration. *Smith vs. Allen*, 68.

3. Creditor cannot contest validity of conveyance by his debtor in an action by grantee for trespass by execution against the land. *Garbutt vs. Smith*, 188.

4. Grantee takes according to his deed, not by a map of a tract out of which he buys a lot. *Perrin vs. N. Y. C. R. R. Co.*, 189.

DEED.

5. Unrecorded is void against a subsequent recorded deed, even in equity. *Johnson vs. Crane et al.*, 254.
6. Condition subsequent. *Rawson vs. School District*, 507.
7. Ratification of deed made during insanity. *Bond vs. Bond*, 507.
8. Equity will not compel grantor to seal a voluntary deed. *Eaton vs. Eaton*, 509.
9. The production of a fraudulent certificate of approval of a land grant, affords strong ground for believing all the title papers to be fabricated. *United States vs. Galbraith*, 51.
10. The court will not confirm a title where the date of the grant has been altered while in the hands of the claimants. *Id.*

DOMICIL, 257.**DURESS**. See **HUSBAND AND WIFE**, 35.

In an action to recover money paid under duress, plaintiff must state facts. *Commercial Bank vs. Rochester*, 639.

DWELLING. See **COVENANT**, 4.

What is not a conversion into a shop. *Wilkinson vs. Rogers*, 692.

EASEMENT. See **WATERCOURSE; WAY**.

Nothing passes as incident to the grant of an easement but that which is necessary for its reasonable enjoyment. *Bean vs. Coleman*, 381.

ELECTION. See **CONSTITUTIONAL LAW**, 38, 39.

Required by statute to be held, is not affected by want of notice. *People vs. Hartwell*, 764.

EQUITY. See **ACCOUNT RENDER**, 2; **BILLS**, 13; **DEED**, 5, 8; **FRAUD**; **MORTGAGE**, 16-18, 28, 31.

1. Although equity will, in some cases, interfere to assert and protect future rights, yet it will not decree *in tressa* as to the future rights of parties not before the court or *in esse*. *Cross vs. De Valle*, 630.
2. Jurisdiction in cases of private nuisance. *Burnham vs. Kempton*, 380.
3. Injunction will be granted where the injury would be irreparable. *Niagara Bridge Co. vs. G. W. R. R. Co.*, 122.
4. Jurisdiction to compel restitution of money improperly paid by officers of a town. *Frost vs. Belmont*, 374.
5. A bill lies to set aside a deed procured by fraud. *Martin vs. Graves*, 62.
6. Amendment after demurrer where there is laches. *Bank vs. Stevenson*, 697.
7. Rehearing on ground of newly discovered evidence. *Dennett vs. Dennett*, 125.
8. When a bill dismissed is a bar to subsequent bill. *Borrowscale vs. Tuttle*, 62.
9. What may be included in the defence of want of equity. *Burnham vs. Kempton*, 380.

ERROR. See **ADMIRALTY**, 6; **COURTS**, 7.

1. A verdict will not be set aside for inconsistent charges to the jury, if all those excepted to by the complaining party are correct. *Niagara Insurance Co. vs. Graff*, 489.
2. Where proof of a payment is erroneously rejected, the remission of the amount after verdict will not cure the error. *Hanson vs. Olcott*, 765.
3. Where a question put to his own witness was improperly overruled, the error was not cured by the party afterwards obtaining an answer to the same question on the cross-examination of a witness of the opposite party. *Flanigan vs. Lampman*, 183.
4. Judgment on a verdict of guilty on one count, will not be reversed for want of finding of the jury on another count. *Edgerton vs. Commonwealth*, 62.

ESTATE. See **DECEDENT**, 1; **EXECUTION**, 1; **INSURANCE**, 29; **WILL**, 8-12.

1. In New York, when land is granted to A. for life and then to his heirs, the persons who, at the termination of the life estate, are the heirs of A., take as purchasers and not by descent. *Moore vs. Littel*, 144.

2. The remainder so limited is contingent, and the heirs apparent of the tenant for life have a future contingent estate, which, under the Statute of New York, will pass by their grant of the land in fee. *Id.*

3. The child of an heir apparent whose mother dies before her ancestor, will not in such case be estopped by covenants of warranty in her mother's deed. *Id.*

ESTOPPEL. See **ESTATE**, 3; **EXECUTION**, 2; **HOMESTEAD**, 1; **SHERIFF**, 1; **SURETY**, 4; **TRUST**, 3.

1. Erroneous information given by holder of security as to the title of a debtor in the property, will not work an *estoppel in pais*, unless he intended to deceive the creditor seeking information, nor unless the latter was led thereby to change his action, and was thereby injured. *Piper vs. Gilmore*, 584.

2. Growth of the law relating to. *Note to Piper vs. Gilmore*, 590.

3. The doctrine of estoppel by covenants of warranty discussed. *Note to Moore vs. Littel*, 149.

EVIDENCE. See **BOUNDARY**, 1; **CONSTITUTIONAL LAW**, 30, 34; **CONTRACT**, V.; **COURTS**, 3; **CRIMINAL LAW**, 1, 2, 6, 14; **EQUITY**, 7; **HUSBAND AND WIFE**, 20, 21; **INSURANCE**, 6, 12, 17, 30.

1. **VERBAL DECLARATIONS OF DECEASED PERSONS**, 641.

2. Of expert, admissible to prove a machine not constructed in workmanlike manner, without proof of particular defects. *Curtis vs. Gano*, 635.

3. Of experts. *Emerson vs. Lowell Gaslight Co.*, 261.

4. Plaintiff's declarations. *Id.*

5. Parol evidence is admissible to show that a paper produced on trial is not the genuine paper called for. *Gilmore vs. Whitcher*, 251.

EXECUTION. See **DEED**, 3; **MORTGAGE**, 24; **SHERIFF**.

1. Where the use and occupancy of land was devised to one during his natural life, and a creditor levied upon his estate, and had it set off by appraisal of his whole interest, the levy was good. *McClure vs. Melendy*, 126.

2. Creditor purchasing subject to mortgage at sale on prior execution cannot dispute validity of mortgage. *Horton vs. Davis*, 700.

EXECUTOR AND ADMINISTRATOR. See **DECEDENT'S ESTATE**, 2; **INSURANCE**, 28.

1. Not personally liable for innocently receiving usury on a note due testator. *Heath vs. Cook*, 507.

2. Executor procuring lease of premises held by testator but forfeited, will hold as trustee. *Lich vs. Bernicker*, 633.

3. In New York, before granting letters, there must be a *written renunciation* or a citation to the person having a prior right. *Barber vs. Converse*, 375.

4. An ordinary action does not lie in New York against a foreign executor as such. *Metcalf vs. Clark*, 502.

5. Proceedings by attachment are inapplicable against an executor not charged with breach of duty except neglect to pay a debt of testator. *Id.*

FALSE IMPRISONMENT.

1. Measure of damages for. *Brown vs. Chadrey*, 61.

2. Private person taking part in an unlawful imprisonment by an officer, is liable for the trespass, but not if he merely gives information to the officer. *Brown vs. Chadrey*, 123.

3. Justification must be specially pleaded under New York Code. *Id.*

FARM MORTGAGES. See **CONSTITUTIONAL LAW**, 42.**FENCE.** See **LIMITATION**, 8.

1. There may be a valid prescription binding the owner of land to maintain perpetually a fence. *Adams vs. Van Alstyne*, 58.

FENCE.

2. In such a case, fence-viewers have no jurisdiction. *Adams vs. Van Alstyne*, 58.
3. Maintenance by a party exclusively for more than 20 years, warrants the presumption of a covenant compelling him to do so. *Id.*

FRAUD. See **AGENT**, 4, 6, 7; **DEED**, 9, 10; **EQUITY**, 5; **STATUTE OF FRAUDS**.

1. To exclude a party from relief against another engaged in the same fraud, he must be not only *in delicto* but *in pari delicto*. *Freelove vs. Cole*, 638.

2. Where the owner of mortgaged land made a "friendly arrangement" with the mortgagee to buy in the land, ostensibly for his own use, but in reality to hold it for the use of the mortgagor, in order to defeat the claim of a third person, he cannot sustain a bill in equity to restrain mortgagee from selling the land. *Randall vs. Howard*, 55.

3. In actions involving questions of fraud, the intent is always a material inquiry; and to establish that, other acts of a similar character, done about the same time, may always be shown. *Amsden vs. Manchester*, 318.

FUTURE ACQUISITIONS. See **BILLS**, 24.

A power to seize future chattels is not an assignment of them. *Reeve vs. Whitmore*, 439.

GAMING.

Money won at play cannot be recovered back. *Welsh vs. Cutler*, 127.

GOVERNOR. See **CONSTITUTIONAL LAW**, IV.; **MANDAMUS**, 7.**GROUND-RENT.**

1. The sum to be paid for the extinguishment of ground-rent is not an estate, but a debt when the owner of the land has elected to pay it. *Schollenberger vs. Brinton*, 591.

2. Therefore where a ground-rent is payable in "lawful silver money of the United States," and there is a clause of extinguishment on the payment of a certain sum "lawful money, as aforesaid," the latter is payable in legal tender notes of the United States. *Id.*

HABEAS CORPUS. See **COURTS**, 12.

Exceptions do not lie to the discharge of a prisoner on *habeas corpus* by a single judge. *Wyeth vs. Richardson*, 185.

HIGHWAY. See **LIMITATION**, 8; **STREAM**.

Commissioners must lay out the whole, as applied for, or none. *People vs. Township Board*, &c., 765.

HOMESTEAD. See **MORTGAGE**, 21.

1. Covenants of warranty in a deed of land, do not estop the grantor from availing himself of an estate of homestead therein. *Doyle vs. Coburn*, 121.

2. An estate of homestead is not defeated by the removal of the wife and children from the premises, if the householder continues to reside thereon. *Id.*

HUSBAND AND WIFE. See **DEED**, 2.**I. Marriage, Divorce, and Alimony.**

1. LAWS REGULATING THE FORMS OF MARRIAGE IN THE UNITED STATES, 129.
2. CONFLICT OF LAWS AFFECTING MARRIAGE AND DIVORCE, 193.
3. VALIDITY AND EFFECT OF FOREIGN DIVORCES, 193.

4. In an action by a husband on ground of adultery, the wife cannot set up the adultery of plaintiff by way of counter claim. *R. F. H. vs. S. H.*, 188.

5. Proof of adultery alone will not authorize a judgment of divorce. It must be averred to have been without the consent, connivance, *privity*, or procurement of the plaintiff. *Myers vs. Myers*, 504.

6. It is the duty of a referee in such case to find not only the facts as to the adultery, but all other material facts. *Id.*

HUSBAND AND WIFE.

7. Opening of decree for alimony for matters occurring at or before the decree. *Perkins vs. Perkins*, 764.

II. *Curtesy and Dower.*

8. The birth of living children, after the conveyance by a married woman of land held by her to her separate use, will entitle her husband to courtesy therein. *Comer vs. Chamberlain*, 317.

9. Where H. received a deed and at the same time reconveyed the land in mortgage to his grantor, the wife of H. was not entitled to dower as against such mortgage. *Hinds vs. Ballou*, 126.

10. Widow dowable of lands to which husband had an inchoate title, and to extent of dower she is representative of the claimants. *Thomas vs. Hesse*, 632.

11. If husband sell without wife's relinquishment of dower, she is dowable according to the law in force at the time of sale. *Id.*

12. If alienees hold such land in several parcels, dower will be assigned in each separately. *Id.*

III. *Separate Estate of Wife.* See USURY, 6.

13. A married woman can charge the whole or a portion of her separate estate as a surety for her husband, the intention to charge such separate estate being declared in the contract. *Barnett vs. Lichtenstein*, 61.

14. Wife cannot charge her separate estate by parol promise to pay a debt of the husband, where her estate is to receive no benefit. *Ledlie vs. Vrooman*, 504.

15. Application of separate estate to maintenance of insane wife. *Davenport vs. Davenport*, 63.

16. Married woman is liable on a note given by her to pay for land for her separate estate. *Chapman vs. Foster*, 317.

17. Policy of insurance to wife cannot be transferred so as to divest her interest. *Eadie vs. Slimmon*, 568.

18. Acknowledgment it seems is not necessary in New York to conveyance of wife's separate estate. *Wiles vs. Peck*, 568.

19. Trust funds of wife lent to husband on his note and by agreement no interest collected, the statute of limitations does not apply. *Upham vs. Wyman*, 699.

20. Settlement by husband on wife—when it will be valid—presumptions and evidence in relation to. *Townsend vs. Maynard*, 572.

21. Husband's declarations not admissible to prove property in wife. *Parvin vs. Capewell*, 575.

22. Possession of money by wife no evidence of her separate right to it. *Id.*

23. Mere gift to wife by husband not a settlement to her separate use. *Id.*

24. Rent of real estate bought by married woman cannot be attached by creditor of the husband. *Goff vs. Nuttall et al.*, 309.

25. In trespass for taking property of a firm of which the wife was a member for husband's debt, she must show that her interest was her separate estate. *Duress vs. Homeffer*, 509.

IV. *Powers and Liabilities of Married Women.* See USURY, 6.

26. Where goods are sold to a married woman upon her individual credit, although the vendors are ignorant of the fact of coverture, there is no liability *ex contractu* on the part of the husband to pay for them. *Goulding vs. Davidson*, 34.

27. But if the credit to the wife was obtained by fraudulent representations on her part that she was unmarried, the vendor may have an action against the husband and wife jointly, either to recover the goods, or damages for their conversion; or *semble*, an action on the case for damages for the fraud. *Id.*

28. For tort of the wife committed in the presence or by order of the husband, the latter alone is liable, and after his death no action survives against the wife for such tort. *Id.*

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29. But if the tort was not in the husband's presence or by his order, it is the wrong of the wife although the husband is jointly liable with her, and in such case an action will survive against the wife alone after the death of the husband. *Goulding vs. Davidson*, 34.

30. Therefore, where goods had been sold to a married woman on her representations that she was sole, and she had given notes in payment, her promise made after the death of her husband to pay the notes was founded on a good and sufficient consideration. *Id.*

31. Whether married woman is liable civilly when she fraudulently represents herself as sole. *Note to Goulding vs. Davidson*, 42.

32. Whether in such case she is bound by subsequent promise, after husband's death. *Id.*

33. Purchase-money is a lien on the land sold, where the purchaser has given no separate security, and this applies to purchases by married women. *Chilton vs. Braiden's Adm.*, 53.

34. A married woman may belong to a trading partnership, if her husband is not a member thereof. *Plumer vs. Lord*, 63.

35. Coercion of wife by threat of prosecuting husband. *Eadie vs. Slimmon*, 568.

V. Actions by Husband and Wife.

36. Under a statute providing that the separate property of a married woman shall remain under her sole control, &c., a married woman, as to her separate property, is in the condition of a *feme sole*, and may bring an action at law in her own name, without joining her husband. *Emerson vs. Clayton*, 530.

37. Actions under statutes providing for wife's separate estate. *Note to Emerson vs. Clayton*, 533.

38. Married woman may, in New York, maintain an action in her own name, and counter claims against the husband will not be allowed. *Paine vs. Hunt*, 252.

39. In a suit by husband and wife, for the loss of merchandise of the wife before marriage, she is not a competent witness for the plaintiffs. *Smith and Wife vs. Boston and Maine Railroad*, 127.

INCOME TAX. See BANKS, 8.

A testator directed an annuity to be paid out of his personal estate "without any deduction whatever:" Held, that the income tax was payable by the annuitant. *Abadam vs. Abadam*, 690.

INFANT. See RAILROAD, 8.

INNKEEPER.

Party hiring room for a ball are not "guests," so as to make innkeeper liable for loss of their property. *Hobbs vs. Carter*, 183.

INSANITY. See DEED, 7; HUSBAND AND WIFE, 15; MENTAL UNSOUNDNESS; SENILE DEMENTIA.

INSOLVENCY. See CORPORATION, 8; PARTNERSHIP, 2, 3, 5, 6, 9; VENDOR, 2.

1. A discharge under the insolvent laws of one state will not discharge a debt to a citizen of another state, unless the latter has voluntarily become a party to the proceedings, and thus given the court jurisdiction. *Baldwin vs. Hale*, 462.

2. Nature and effect of a discharge under a state insolvent law. *Note to Baldwin vs. Hale*, 469.

3. Attachment by creditor of an insolvent's property in another state. *Denton vs. Foster*, 506.

4. New promise to pay made before discharge is valid. *Lerow vs. Wilmart*, 698.

5. Plea of discharge. *Haggerty vs. Amory*, 698.

INSURANCE. See AMENDMENT, 3; BILLS, 3; HUSBAND AND WIFE, 17.

I. *Insurable Interest.*

1. Where a creditor of F. had insured his life for a sum not exceeding his debt, and before F.'s death, action upon the debt was barred by the Statute of Limitations, the insured was entitled to recover from the company. *Rawls vs. American Ins. Co.*, 167.
2. In such a case the debt still exists, and is not extinguished, as in the case of payment. *Id.*
3. In life insurance it is enough that the party effecting the policy has an insurable interest at its inception. *Id.*
4. The rules of the defendant required the applicant for insurance to furnish a reference to some third person, from whom information might be obtained respecting the health and habits of the person whose life was to be insured: Held, that the statement of the third person was not a warranty. *Id.*
5. Where a series of questions is put to the insured, and fully answered, an omission to state matter not called for by any general or specific question, is not a concealment. *Id.*
6. The following propositions, among others, in the law of evidence, decided:
 - a. Statements by the debtor made after the insurance is effected are not admissible in evidence against the insured.
 - b. Experts cannot be examined as to the point whether a person who is in the habitual use of intoxicating drinks can be regarded as an insurable subject.
 - c. When the defendant puts in issue in the pleadings, the good faith of the author of a written statement upon which the policy is issued, it is proper for the plaintiff to ask such person if his answers to questions contained in the statement were made in good faith. *Id.*
7. The rule of the common law as to the right to insure, where the insured has no interest, discussed. *Note to Rawls vs. Insurance Co.*, 178.
8. Whether life insurance is a contract of indemnity, discussed. *Id.*
9. If one partner insures in his own name only, and there is no evidence to show that the insurance was for the partnership, or that the premium was paid from the partnership funds, the policy will be held to cover his undivided interest only. *Insurance Co. vs. Hull*, 417.
10. One partner cannot, in his own name, and for his own benefit, insure the interest of his copartner, even though such may have been the intention of both the insurer and insured. *Id.*
11. By consignee or commission merchant in his own name. *Note to Insurance Co. vs. Loney*, 662.
12. Parol evidence to affect the language of a policy. *Id.*

II. *Construction of Policy.*

13. A building was insured for \$3000 by A., and \$2000 by B., in separate policies, each of which contained a clause allowing the insurer the option of rebuilding, and the building having been destroyed by fire, A. and B. served a joint notice that they were prepared to rebuild. The building having been reconstructed, the insured insisted that the contract had not been substantially complied with, and brought an action on the policy against A., claiming to recover the full amount of his original loss: Held, that he could not recover. *Morrell vs. Ins. Co.*, 404.
14. After the election and notice, a contract to rebuild existed between the parties, and if this is not fulfilled by the insurer, he is liable for the damages sustained by the non-fulfilment of the contract, which may be more or less than the amount insured. The action, consequently, should have been brought to recover damages for breach of contract. *Id.*
15. It seems that the action might have been brought against both insurers jointly or either separately. *Id.*
16. Effect of an election by company to rebuild under the clause in the policy giving them that right. *Note to Morrell vs. Ins. Co.*, 414.

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17. A policy of insurance containing a clause that goods held on commission must be insured as such, is to be interpreted by its own terms, and parol evidence is not admissible to show that the insurers knew the kind of business of the insured, and the character of his interest in the goods. *Baltimore Ins. Co. vs. Loney*, 651.

18. There was an insurance by appellant upon goods of class A. (the appellees' own goods merely), and insurance by another company on goods of classes A. and B. indiscriminately (class B. being goods held on commission). The appellant's policy contained a covenant that no greater proportion of a loss should be recovered under it than the amount thereby insured should bear to the whole amount of all the insurances on the premises. The loss on goods of class B. alone, was greater than the second company's entire insurance, and it accordingly paid the full amount without reference to the classes of goods: *Held*, that the second insurance was not within the effect of the covenant for proportion, and that the appellant was not entitled to any abatement of its liability by reason thereof. *Id.*

19. The policy contained a clause that the loss should be paid within sixty days after it should be ascertained and proved. The loss was duly proved within the sixty days, and was acknowledged by the company, who offered payment of what it assumed as the amount of its liability (but in fact a smaller sum than it was bound for), and then refused to pay any larger sum: *Held*, that thereby the condition as to the sixty days was waived, and interest was due from that date on the sum for which the company was really bound. *Id.*

20. A policy of insurance contained a clause that no action should be brought upon it unless within twelve months after the loss had occurred. Such a limitation must rest upon the tacit condition that the insurer should be accessible to the service of process. *Ins. Co. vs. Hall*, 417.

21. A condition that if gunpowder was kept without written permission in the policy, the policy should be void, is not broken if the agent at the time of taking the insurance knew that gunpowder was kept. *Id.*

22. Notice to the agent was notice to the insurer; and by issuing the policy the latter waived the condition. *Id.*

23. Liquors, the sale of which is prohibited under a penalty, may still be insured. *Niagara Ins. Co. vs. De Graff*, 489.

24. Goods were insured as "groceries." The stock included spirituous liquors kept for sale. A loss occurred, and an action being brought on the policy, the insurer asked the court to charge that, since the Prohibitory Liquor Law, the term "groceries" would not include liquors. The question whether the liquors were insured under this term was properly left to the jury. *Id.*

25. A policy of insurance on "groceries" had a condition that if the premises were used for storing liquors, "except as herein specially provided for, or hereafter agreed to by this corporation, in writing upon this policy," the policy should thereby be rendered of no effect. Liquors were kept, and it was held that if the jury found that the term "groceries," as used, included these articles, then they were "specially provided for in writing on the policy." *Id.*

26. An agreement to insure for the benefit of a vendor and to assign policy for his security, with subsequent insurance and no assignment, operates as equitable assignment of money payable upon the policy in case of loss, but not of policy, and therefore not within clause declaring the interest of insured is not assignable without written consent. *Cromwell vs. Brooklyn Fire Ins. Co.*, 123.

27. Interest in a policy on realty descends to heirs. *Wyman vs. Wyman*, 569.

28. If policy runs to assured, his executors, &c., the latter may maintain an action as trustee for the heirs. *Id.*

29. Damages in such case are realty. *Id.*

30. Acknowledgment in policy not conclusive of receipt of premium. *Sheldon vs. Atlantic Ins. Co.*, 635.

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31. Cases of marine insurance discriminated. *Sheldon vs. Ins. Co.*, 635.
32. A general agent may waive condition that no insurance shall be binding till payment of premium. *Id.*
33. What will amount to waiver. *Id.*
34. Clause "partial loss on tin plates excepted." *Kettell vs. Alliance Ins. Co.*, 186.
35. Insurance on goods contained in a store, wall of the building fell, and before the goods could be removed fire broke out. Insurers liable for goods not injured by the fall. *Lewis vs. Springfield Ins. Co.*, 186.
36. Allowance for advanced premiums. *Chesbrough vs. Wright*, 444.

III. Marine Insurance.

37. A warranty by the assured that the vessel shall be free from capture, seizure, or detention, includes a capture by a cruiser of the so-called Confederate States: *Dole vs. New England Ins. Co.*, 315.
38. In such case the liability of the insurers is terminated by such capture, so that they are not liable for the burning of the vessel immediately thereafter. *Id.*
39. Conveyance and reconveyance of vessel by way of mortgage is not within the terms of a policy against assignment of insured's interest. *Hitchcock vs. N. W. Ins. Co.*, 500.
40. Notice of abandonment to support claim for constructive total loss must state the damage to exceed half the value. *McConochie vs. Sun Ins. Co.*, 701.
41. Implied warranty of seaworthiness in time policy. *Hoxie vs. Pacific Ins. Co.*, 507.

IV. Life Insurance. See *ante*, 1-8.

42. A policy is conditioned to be void in certain events, "except to the extent of any interest acquired therein by assignment for valuable consideration." The insurer mortgages the policy, together with real estate; afterwards the policy is avoided under the condition. The society is compelled by the mortgagee to pay him the policy, and it then files a bill to take his place as against the other property. *Held*, that such a claim cannot be sustained. *Solicitor's Life Assurance Society vs. Lamb*, 686.
43. The premium on a life insurance policy due on Sunday, is not to be paid until Monday, even if assured dies on Sunday. *Hammond vs. American Ins. Co.*, 186.

V. Mutual Insurance Company.

44. May divide its business into classes, but whether it may exempt premium notes in one class from assessment for losses in another, *quære*. *Sands vs. Boutwell*, 636.
45. Receiver may charge in his assessment for expenses of making and collecting the same. *Id.*

INTEREST. See **BANK**, 7, 10; **NEGOTIABLE BONDS**, 2, 5; **PARTNERSHIP**, 3; **USURY**.

1. A purchaser for cash is chargeable in case of non-payment, with interest from delivery. *Foote vs. Blanchard*, 250.
2. On a debt due by garnishee to his creditor as whose property it is attached, is suspended during the proceedings. *Jackson's Ex'rs. vs. Lloyd*, 309.
3. Interest "till paid" means from date. *Pittman vs. Barrett*, 633.

INTERNAL REVENUE.

- Character of the office of commissioner. *Note to McCready vs. Callahan*, 241.

INTERNATIONAL LAW. See **CONSTITUTIONAL LAW**, 8, 9, 16.**JUDGMENT.** See **COURTS**, 2, 5, 7, 10; **MORTGAGE**, 2; **PARTITION**.

1. Cannot be impeached in action upon it for want of authority of attorney. *Finneran vs. Leonard*, 506.
2. The order of court, denying a motion to cancel a judgment, entered upon

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confession, as having been paid, is conclusive between the parties. *Dwight vs. St. John*, 59.

3. The New York act in respect to authentication of foreign, relates to provincial as well as imperial governments. *Lazier vs. Westcott*, 501.

4. How an exemplification of such judgment may be proved and received in evidence. *Id.*

JUSTICE.

1. Jurisdiction of a cause commences on the day and hour fixed in the summons for its return. *Sagendorf vs. Shultz*, 504.

2. When any act is deferred beyond the time limited in the Justice's Act, by the consent of the parties, it is no error that the act is done after the time specified in the act, if done within the agreed time. *Barnes vs. Badger*, 503.

LANDLORD AND TENANT.

1. Construction of lease. *Crouch vs. Parker*, 253.

2. Lessee of upper story is discharged from payment of rent by destruction of building by fire. *Graves vs. Berdan*, 700.

3. Contra if he has an interest in the soil. *Id.*

4. Clause that landlord shall pay value of buildings at end of term does not give tenant a right to hold over until paid. *Speers vs. Flack*, 633.

5. Lease "from the 1st July" begins on 2d. *Atkins vs. Sleeper*, 698.

6. If the owner of a tenement has obtained peaceable possession of a part of it, upon the expiration of his tenant's estate, he may use force to take possession of the residue. *Mugford and Wife vs. Richardson*, 122.

LAW REFORM AND CODIFICATION, 74.**LAW REFORMS AND LAW REFORMERS, 513.****LEGISLATURE.** See **CONSTITUTIONAL LAW, V.; COURTS, 1.****LICENSE.**

1. To trade. See **CONSTITUTIONAL LAW, 7, 10.**

2. To sell liquors. See **CONSTITUTIONAL LAW, 23.**

LIEN. See **ADMIRALTY, 1, 2; HUSBAND AND WIFE, 33; MECHANICS' LIEN.**

1. May exist against a light-boat building under contract for the United States. *Briggs vs. A Light-Boat*, 566.

2. Light-boat is a vessel within the statute. *Id.*

3. Fraudulent conveyance of land does not disturb a lien, and it is therefore not payable out of proceeds from a sale under subsequent judgment. *Hoffman's Appeal*, 309.

LIMITATION. See **AMENDMENT, 2; ASSIGNMENT FOR BENEFIT OF CREDITORS, 12; ATTORNEY, 1; FENCE, 3; HUSBAND AND WIFE, 19; INSURANCE, 1, 2, 20; MORTGAGE, 18; WATERCOURSE, 4-7.**

1. The statute affects the remedy only, and belongs to the *lex fori*. *Paine vs. Drew*, 381.

2. Therefore an action may be maintained in one state on a contract which would be barred in the state where it was made. *Id.*

3. An action may be barred by a statute passed after the cause of action accrued, if a reasonable portion of the time of limitation remain after the enactment of the statute. *Howell vs. Howell*, 378.

4. The statutory exception against parties absent from the state applies to those who never resided in the state. *Paine vs. Drew*, 381.

5. The statute begins to run against a note, payable in such portions, and at such times as the directors of a company may require, from the time it is given. *Colgate vs. Buckingham*, 60.

6. A verbal promise to pay a note has the same effect as a new note. *Sennott vs. Horner*, 313.

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7. Where the defendant has filed his account as a set-off, the plaintiff may plead the statute to it, but only so much will be barred as had accrued more than six years prior to the date of plaintiff's writ. *Rollins vs. Horn*, 382.

8. Maintenance of fence in a highway for forty years gives a right to continue it there as against the public. *Cutter vs. Cambridge*, 316.

LIS PENDENS. See ACTION, 2, 3.

The plea of *lis pendens* in another state is no defence. *Smith vs. Lathrop*, 107.

LUNATIC. See DEED, 7; HUSBAND AND WIFE, 15; MENTAL UNSOUNDNESS; SENILE DEMENTIA.**MALICIOUS PROSECUTION.**

Judgment in favor of plaintiff sufficient but not conclusive evidence of probable cause, though reversed on second trial. *Palmer vs. Avery*, 637.

MANDAMUS. See CONSTITUTIONAL LAW, 24.

1. Is not a writ of right, but is discretionary with the court. *The People ex rel. Keyes vs. The Auditor of Public Accounts of Illinois*, 332.

2. The court will not entertain jurisdiction where substantial interests are not involved. *Id.*

3. A demurrer to a return to an alternative writ of mandamus, setting up facts, some of which are provable by the legislative journals only, and some by parol evidence, admits not only the facts resting on record evidence, but all facts necessarily existing outside of, and never appearing upon the journals, so far as they would be proper evidence for any purpose. *Id.*

4. In a case involving public interests, the issue of a peremptory writ will be stayed on suggestion of collusion. *State vs. Avery*, 376.

5. Should not issue unless the relator's right is clear to have the things sought by it done, and unless the party sought to be coerced ought to do it. *People ex rel. Harless vs. The Secretary of State*, 314.

6. Confers no new right. Can only compel the performance of an existing duty. *Id.*

7. Will not lie to compel a governor of a state to perform an official duty. *Id.*

MARSHALLING, IN EQUITY. See MORTGAGE, 3, 15, 16.**MASTER AND SERVANT.** See CONTRACT, 14-16; RAILROAD, 7.

1. Neglect of master to use safety-plug in his steam-boiler required by statute, entitles his servant to recover for injuries resulting from an explosion. *Cayzer vs. Taylor*, 187.

2. Master is responsible for injuries occasioned by the incompetency of a fellow-servant, or defect in machinery. *Id.*

MECHANIC'S LIEN. See LIEN, 1.

1. Is waived by acceptance of note. *Green vs. Fox*, 506.

2. Under an entire contract, if there is no lien for the whole work and materials, there is none for any part. *Morrison vs. Minot*, 64.

MENTAL UNSOUNDNESS AS AFFECTING TESTAMENTARY CAPACITY, 1, 385.**MINES AND MINING RIGHTS.** See DAMAGES.

1. A mining right, under the Mexican ordinances, is a title within the Act of 1851—and the Board of Land Commissioners had jurisdiction of such a claim. *United States vs. Castillero*, 52.

2. The ordinances of the King of Spain, made in 1783, prescribe the mode of acquiring title to mines, and were in force in Mexico at the date of the conquest of California. *Id.*

MORTGAGE. See BANKS, 10; CONSTITUTIONAL LAW, 42; CORPORATION, 1; EXECUTION, 2; HUSBAND AND WIFE, 9; INSURANCE, 39; TENDER.

MORTGAGE.**I. Of the making and recording.**

1. Defeasance need not be of same date as the deed. *McIntire vs. Shaw*, 316.

2. Mortgage recorded after judgments is entitled to priority if judgment-creditors had actual knowledge of it before the debts were contracted. *Britton's Appeal*, 573.

3. Where the mortgagor sells portions of the land at different times, that which he retains will, in equity, be held primarily liable for the whole debt: and if not sufficient, the several parcels sold will be liable in the inverse order of such sales, beginning with the parcel last sold. *Brown vs. Simons*, 154.

4. Provided, however, that the previous conveyances not registered, are subject to be postponed to subsequent registered conveyances. *Id.*

5. Mortgage to secure all existing debts without naming them is not void for uncertainty. *Michigan Ins. Co. vs. Brown*, 46.

II. Of the Rights of Parties and of Title.

6. The mortgagee in a mortgage made to secure a negotiable promissory note for liquors sold in violation of law, may convey a good title thereto by assigning the same with the note, before its maturity, to one who takes them for a valuable consideration without notice. *Taylor vs. Page*, 121.

7. The assignee of a mortgage on land subject to re-entry for non-payment of rent on a lease in fee, is entitled to tack the rent actually paid to protect his interest, to the amount of his mortgage, where the mortgagor has assumed such payment of rent. *Robinson vs. Ryan et al.*, 58.

8. The conveyance of an equity of redemption of land which is subject to a mortgage containing a power of sale, gives to the grantees the right to the surplus, upon a sale of the premises under the power. *Buttrick vs. Wentworth et al.*, 121.

9. Where one having a right of redemption redeems the mortgaged premises by the payment of money, the transaction will be treated as an assignment of the mortgage. *Hinds vs. Ballou*, 126.

10. The quit-claim deed of a mortgagee in possession is sufficient to transfer his interest under the mortgage. *Id.*

11. The purchaser at a mortgage sale under an attempted statutory foreclosure, void as against the mortgagor for want of notice, stands as an assignee of the mortgage. *Robinson vs. Ryan et al.*, 58.

12. Surrender of defeasance and acceptance of new bond for consideration partly new, gives grantee a title in fee. *Falls vs. Conway Ins. Co.*, 506.

13. The purchaser who fails to require the production of the bond, is chargeable with notice of any defect in the assignor's title thereto. *Kellogg vs. Smith*, 499.

14. A mortgagee in possession and taking the rents and profits, can acquire no title against the mortgagor or his assignee, by a purchase of the land at a sale for the taxes upon it; but he may add the sum paid for such taxes, to the mortgage-debt as expenses necessarily incurred in protecting the estate. *Brown vs. Simons*, 154.

15. The release by the mortgagee of a portion of the land mortgaged with the knowledge of a prior sale of another portion, will operate as to such prior purchaser as a discharge *pro tanto* of the mortgage-debt. *Id.*

16. The doctrine of subrogation and equitable contribution discussed. *Note to Brown vs. Simons*, 154.

III. Remedy on a Mortgage.

17. Equity follows the analogies of the law where an analogous relief is sought upon a similar claim, but where the relief sought is in its nature of equitable, not legal cognisance, equity follows its own rules. *Michigan Ins. Co. vs. Brown*, 46.

18. Therefore, on a bill for foreclosure and praying a personal decree against the mortgagor for the balance that should be due if the mortgaged premises should prove inadequate, the court will decree the foreclosure, but

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the personal decree under the statute being in the nature of a legal remedy, will not be made after such length of time as would have barred an action at law on the bond. *Michigan Ins. Co. vs. Brown*, 46.

19. In a suit for a foreclosure brought by a prior mortgagee against the mortgagor and subsequent mortgagees, where the bill alleges that the petitioner indorsed a note of a certain date and amount for the mortgagor, under the mortgage, but contains no allegation that the note was a renewal of a former one: Held, that evidence to prove the note to have been given in renewal of a former note was inadmissible. *Boswell vs. Goodwin et al.*, 79.

20. Where a mortgage has been given to indemnify an accommodation indorser of a note, and the note at maturity is not paid, but renewed, with a renewal of the indorsement, the security applies to the renewal note in the same manner as to the original one. So long as the renewal note is not paid the indorser is not indemnified for his original indorsement. *Id.*

21. A conditional judgment may be rendered in an action to foreclose a mortgage of land which does not convey an existing estate of homestead therein. *Doyle vs. Coburn*, 120.

22. Sale under power while suit to foreclose is pending is fraudulent. *Hurd vs. Cone*, 632.

23. Bond for appeal in bill to foreclose, does not stay sale. *Orchard vs. Hughes*, 694.

24. Execution cannot issue on decree for foreclosure for balance due after sale. *Id.*

25. This applies to Territorial Court of Nebraska. *Id.*

IV. Mortgage of Future Acquired Property.

26. A railroad company authorized its president to issue bonds secured by a mortgage on the road and its franchises. The president executed an instrument reciting his authority, and proceeding in his name as president to mortgage the road, &c., but he signed the instrument in his own name simply. Afterwards, the company issued two sets of bonds, secured by second and third mortgages in due form. The first bonds not having been paid when due, the trustees filed a bill to foreclose the mortgage, and thereupon it was held, that the corporation had a legal competency to pledge its credit for the procurement of rails, and to secure payment by a mortgage. *Miller et al. vs. The Rutland Railroad Co.*, 616.

27. The instrument executed by the president not being executed by or in the name of the corporation, cannot operate as its deed. *Id.*

28. The transaction in a court of equity is an *equitable mortgage*, and thus entitles the holders of what was intended to secure the first mortgage-bonds, to their full right in equity to the mortgage intended to be given. *Id.*

29. The trustees under the second and third mortgages were the agents of the holders of bonds under such mortgages, and actual notice to said trustees of the equitable first mortgage, was notice to the bondholders, who therefore took their bonds subject to all the legal consequences of the existence of the said equitable first mortgage. *Id.*

30. The corporation had sufficient interest in the subject-matter of the mortgages upon which said mortgage would lawfully be operative. *Id.*

31. There is no need of a preliminary decree for the reformation of the deed, and the court can give immediate effect to the instrument, as if it were reformed in pursuance of a decree of equity. *Id.*

32. A mortgage of personal property not in existence, or not owned at the time by the mortgagor, is valid, where it is sufficiently defined as the product of, or as incident to something *in presenti*, so as to be presumed within the minds of the parties to the mortgage. *Morrill et al. vs. Noyes*, 18.

33. Subject discussed. *Note to Morrill vs. Noyes*, 30.

IV. Of Indemnity and to secure Future Advances.

34. Mortgage to secure future advances where the mortgagee has definitely agreed to make such advances when recorded, is not affected by a subsequent

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mortgage of the same property, though the advances may be made after such record. *Boswell vs. Goodwin et al.*, 79.

35. Where, however, it is optional with the mortgagee to make the advances or not, and he has actual notice of a later mortgage upon the same property for an existing debt or liability, such later mortgage will take precedence of the prior one as to all advances made after notice. *Id.*

36. Whether the record of the later mortgage would not be sufficient notice to the prior mortgagee; and whether a mortgage to secure future advances, to be made or not at the option of the mortgagee, should not stand in all respects as if it was executed at the time the advances are in fact made: *Quere. Id.*

37. It makes no difference that such later mortgage is given to secure future advances to be made or not at the option of the mortgagee, so long as the advances under it are actually made before the advances under the prior mortgage over which they claim precedence. *Id.*

38. A knowledge of the existence of the later mortgage is enough to affect the prior mortgagee, as to his future advances, even though he be not notified of the advances actually made under the later mortgage. *Id.*

39. Effect of registration. *Note to Boswell vs. Goodwin*, 91.

40. Instrument held not to be for indemnity merely. *Butler vs. La Due*, 248.

V. *Chattel Mortgage.* See SHIPPING, 4, 5; VENDOR, 11.

41. A mortgage of personal property in and about a hotel, including "things of every name and nature, situate and being in and about it," will embrace a sail-boat upon the water near it, and used in connection with it. *Veazie vs. Somerby*, 64.

42. Purchase at a sheriff's sale of property subject to a chattel mortgage, and subsequently of the mortgage, is not necessarily a satisfaction of the mortgage. *Brown vs. Rich*, 188.

43. Act of Congress as to recording mortgage of a vessel does not supersede state laws for same purpose. *Aetna Ins. Co. vs. Aldrich*, 570.

MUNICIPAL CORPORATION. See CONSTITUTIONAL LAW, 43; CONTRACT, 9; EQUITY, 4; NEGLIGENCE, 2.

1. Authority to subscribe for stock "as fully as any individual," authorizes issue of bonds in payment. *Seybert vs. Pittsburgh*, 629.

2. Such subscriptions are constitutional. *Gelpcke vs. Dubuque*, 629.

3. Not liable in foreign attachment for bounty voted to volunteer. *Brown vs. Heath*, 125.

4. Cannot be made garnishee in attachment. *Burnham vs. Fond-du-Lac*, 509.

5. Cannot appropriate money to individuals for expenses in procuring its charter. *Frost vs. Belmont*, 374.

6. Liability for negligence of its contractors. *Note to Painter vs. Pittsburgh*, 358.

7. A verdict and judgment against a city, in an action for personal injuries occasioned by a defect in a highway, are conclusive evidence in a subsequent action by the city against the tenant of the land, who had notice of the pendency of the former suit. *Boston vs. Worthington*, 186.

8. Proceedings in the construction of public works by commissioners. *People vs. Yonkers*, 124.

9. Election of clerk. Duty of officers to be present at the election. *Kimball vs. Marshall*, 125.

NEGLIGENCE. See BILLS, 28, 29; MASTER AND SERVANT, 1, 2; MUNICIPAL CORPORATION, 7; RAILROAD, II.

1. Where a person employs another, exercising a distinct employment, to do work by a special contract, for a stipulated sum, and does not interfere

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with the mode of performance, he is not responsible for the acts or negligence of the contractor or his employees. *Painter vs. The City of Pittsburgh*, 350.

2. This rule applies with full force to municipal corporations. *Id.*

3. The case of *Bush vs. Steinman*, 1 Bos. & Pull. 404, rejected as authority. *Id.*

4. Liability for acts of a contractor. *Note to Painter vs. Pittsburgh*, 358.

5. There is no privity to make a sub-contractor liable to principal. *Bissell vs. Roden*, 633.

6. A party suing must show that he was not himself guilty of such negligence as contributed to the injury. *Telfer vs. Northern Railroad Co.*, 665.

7. Where a person in crossing a railroad track is injured by collision with the train, the fault *prima facie* is his own, and he must show affirmatively that it is not, before he can recover. *Id.*

8. In an action by surviving relatives for death caused by negligence, the measure of damages is the *pecuniary loss* merely, and in estimating that, the chances of health and life are to be considered as well as the value of services. *Id.*

9. The reciprocal duties of railroad companies and persons crossing the track discussed. *Id.*

10. Is for the jury. *Huelsenkamp vs. Citizens' Railroad Co.*, 633.

11. Carrier not liable if person injured by his own negligence. *Id.*

12. Injury to plaintiff by his own negligence. *Todd vs. Old Colony Railroad Co.*, 505.

13. Familiarity with a dangerous place is to be regarded in determining a person's negligence or care in passing it. *Smith vs. Lowell*, 251.

14. Person is liable for damages caused by sparks from a steam-engine used without precaution to prevent injury. *Teall vs. Barton*, 318.

15. An action for injury to plaintiff's house will fail if it appear that the injury was partly the result of water dripping from the house itself. *Martin vs. Simpson*, 316.

16. Turning diseased sheep into lot adjoining where another's sheep are kept. *Fisher vs. Clark*, 638.

NEGOTIABLE BONDS. See COURTS, 15; MORTGAGE, 26-29; MUNICIPAL CORPORATION, 1, 2.

1. Bonds of a railroad company, under its corporate seal or not, payable to A. B., or the holder thereof, are negotiable. *The Connecticut Ins. Co. vs. The Cleveland, &c., Railroad Co.*, 443.

2. If interest coupons, annexed to a bond of this description, are not paid when due, interest should be allowed. *Id.*

3. An indorser of such bond "for value received," is not to be deemed an accommodation indorser. *Id.*

4. Power of corporations to make such indorsements or guarantees of each other's bonds; the consideration therefor, and the rights of holders of the bonds. *Id.*

5. Holder of coupon payable to bearer may recover amount with interest and exchange. *Gelpcke vs. Dubuque*, 629.

NOTARY. See BILLS AND NOTES, 28-31.

How far he is a public officer. *Note to American Express Co. vs. Dunlevy*, 271.

NOTICE. See INSURANCE, 22, 40; MORTGAGE, 11, 13, 29, 35-39.

NUISANCE. See EQUITY, 2; STREAMS, 2.

OFFICE. See QUO WARRANTO.

ONUS PROBANDI. See CORPORATION, 3; CRIMINAL LAW, 13; VENDOR, 6.

PARTITION.

1. Where proceedings are properly taken to bind unknown owners, they

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are concluded as to a paramount title in severalty as well as their interest in common. *Kane vs. Rock River Co.*, 509.

2. Sufficiency of proceedings to bind unknown owners. *Id.*

PARTNERSHIP. See **ASSIGNMENT FOR BENEFIT OF CREDITORS**, 6; **CONSTITUTIONAL LAW**, 3-5; **HUSBAND AND WIFE**, 34; **INSURANCE**, 9, 10.

1. Firm not liable for debt contracted by partner in his own name though with partnership funds and for partnership purposes. *N. Penn. Coal Co.'s Appeal*, 572.

2. On failure of firm and sale of the land partnership-creditors only are entitled to proceeds. *Id.*

3. Where the separate estate of an insolvent partner is more than sufficient to pay his separate debts, the surplus is to be applied to paying joint debts, before paying interest. *Thomas vs. Minot*, 185.

4. Manufacturing corporation cannot form partnership with an individual. *Whittenton vs. Mills*, 184.

5. Such nominal partnership cannot be put into insolvency. *Id.*

6. Heirs of deceased partner cannot be made parties to a suit involving the title to lots assigned by the surviving partner of an insolvent firm. *Rothwell vs. Dewees*, 50.

7. Partners are liable for trespass by themselves or their employees in the conduct of their business. *McKnight vs. Ratcliff*, 310.

8. But a special partner is not so liable though he may have done some act unconnected with the trespass which would make him generally liable for the debts of the firm. *Id.*

9. Special partner cannot claim as a creditor of an insolvent firm, of which he was a member. *Dunning's Appeal*, 312.

10. Special partner cannot be made personally liable except by his own acts or those of his partners, which he knows and assents to. *Singer vs. Kelley*, 310.

PATENT.

Purchaser of machine from grantee of right to sell, may use machine after expiration of his vendor's license. *Bloomer vs. Millinger*, 695.

PLEADING. See **DURESS**; **FALSE IMPRISONMENT**, 3; **MANDAMUS**, 3.

1. Replication withdrawn after being held insufficient on demurrer, and new one filed. Waiver of writ of error on first. *Clearwater vs. Meredith*, 695.

2. Judgment on demurrer. *Id.*

3. A judgment under the Code must be based on the pleadings, and is not to be given for the defendant, for a cause of action he has not set up by way of defence or counter claim. *Wright vs. Delafield et al.*, 58.

PRACTICE. See **ADMIRALTY**, 3, 4; **COURTS**, 6, 7; **COVENANT**, 3; **PROCESS**, 1; **TRIAL**, 1.**PRESCRIPTION.** See **FENCE**, 1, 3; **LIMITATION**, 8; **WATERCOURSE**, 4, 5, 7.**PRIVILEGE.** See **CORONER**.**PRIZE.** See **CONSTITUTIONAL LAW**, 8.

1. It is the duty of the Prize Court to determine what ships shall share in the proceeds of a prize; but it is the province of the Secretary of the Navy to decide what persons constituted the officers and crews of such ships, and the share which each shall receive. *The Cherokee*, 289.

2. All prizes belong primarily to the Government, and any person claiming to participate therein must show a grant from the Government. *Id.*

3. The English prize acts and the decisions under them examined and commented on at length. *Id.*

4. The origin and growth of the doctrine of constructive capture stated. *Id.*

5. The English doctrine of constructive capture by association is entirely

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judicial, has not been uniform, is not well defined or settled, and appears finally to have been discarded. *The Cherokee*, 289.

6. The statutes of the United States provide expressly for two classes of ships which shall share the proceeds of a prize:

(1). Those making the capture;

(2). Those within signal distance of the vessel making the capture. *Id.*

7. The statutes of the United States having thus adopted only a portion of the English doctrine of constructive capture, our courts will not go beyond the limits thus assigned them. *Id.*

8. The United States Prize Acts of 1799, 1800, and 1862 commented on. *Id.*

9. The statutes also provide different rules of distribution of the proceeds where the prize was of equal or superior and where it was of inferior force to the vessel or vessels making the capture. *The Atlanta*, 675.

10. In estimating the relative force of the prize for the purpose of such distribution, only the first class of captors are to be considered. *Id.*

PROCESS. See **INSURANCE**, 20.

Service made by a trick by which defendant was got within the jurisdiction will be set aside. *Metcalf vs. Clark*, 502.

QUO WARRANTO.

1. Must be brought during the official lifetime of the officer. Officer *de facto* will be considered also *de jure* as to all official acts, unless judicially removed before expiration of term. *Com. vs. Smith*, 574.

2. Termination of office during pendency of. *People vs. Hartwell*, 764.

RAILROAD. See **COMMON CARRIER**; **CORPORATION**; **MORTGAGE**, 26-30; **NEGLIGENCE**, 7, 9; **NEGOTIABLE BONDS**.**I. General Powers.**

1. Power to mortgage its franchise. *Note to Morrill vs. Noyes*, 30.

2. Power to discriminate between "local" and other freight. *Twells vs. Penn. Railroad Co.*, 728.

3. May be a corporation *de facto* as against a subscriber to stock, though it could not stand against the people. *Buffalo, &c., Railroad Co. vs. Cary*, 497.

4. Act of Legislature authorizing consolidation of connecting roads. Effect on contracts. *Clearwater vs. Meredith*, 695.

II. Liabilities.

5. Not liable for loss of baggage on connecting road over which it sells a ticket, if the ticket contains a printed stipulation that the company assumes no such responsibility. *Penn. Railroad Co. v. Schwarzenberger*, 572.

6. Company issuing ticket for excursion over several lines, and sending its baggage-car through, is liable for loss of baggage anywhere on the route. *Najac vs. Boston, &c., Railroad Co.*, 567.

7. Liable for negligence of driver of street car in assisting passengers to get aboard. *Drew vs. Sixth Av. Railroad Co.*, 498.

8. Where passenger is an infant. *Id.*

9. Measure of damages in such case. *Id.*

10. If a passenger is lawfully on the cars, the company is bound to carry him safely, without regard to the kind of cars, or the payment of fare. *Ohio, &c., Railroad Co. vs. Muhling*, 312.

11. Charging of illegal fare in New York. *Chase vs. N. Y. Central Railroad Co.*, 635.

12. The Massachusetts Statute, 1840, c. 85, § 1, providing for damages for property set on fire by sparks, &c., extends to personal property. *Ross vs. Boston, &c., Railroad Co.*, 251.

REAL ESTATE. See **INSURANCE**, 27-29; **WILL**, 9.**RECEIVER.** See **CORPORATION**, III.; **INSURANCE**, 45.

Actions against, by adversary claimants of property. *Note to Morrill vs. Noyes*, 30.

RELATION.

The doctrine of relation being a fiction of law, is to be resorted to only for the advancement of justice; and has not been adopted as a rule when third persons, who are not parties, or privies, might be prejudiced thereby. *Pierce vs. Hall*, 503.

RELEASE. See MORTGAGE, 15.

1. Covenant may be release for one purpose, but not for all. *Ledger vs. Stanton*, 691.
2. The effect of releases on contingent interests discussed. *Note to Moore vs. Littel*, 152.

REMAINDER. See ESTATE.**RENT.** See LANDLORD AND TENANT; MORTGAGE, 7.**REPLEVIN.** See SUNDAY.

Will not lie for one who has actual possession of the property. *Hickey vs. Hinsdale*, 248.

RIVER. See STREAM.**ROAD.** See HIGHWAY.**SALE.** See VENDOR.

Contracts of Sale and of Bailment, 321.

SECURITY. See BILLS, 37; INSURANCE, 26; MORTGAGE, 6, 20, 34-40; VENDOR, 4, 17.

1. A president of a corporation who has received bonds from his company to hold as collateral security for an indorser for the company, becomes a trustee, and is personally responsible for the execution of the trust. *Wilkinson vs. Stewart*, 313.
2. Sale for less than value. *Fletcher vs. Dickinson*, 505.
3. Application by holder. *Wilcox vs. Bank*, 567.

SENILE DEMENTIA, 449.**SET-OFF.** See CONFLICT OF LAWS, 2; LIMITATION, 7.

A trustee has the right to set off all *bona fide* claims against the principal debtor, though the property may have come into his possession by an arrangement, clearly fraudulent as against creditors. *Kelly vs. Ellison and Trustee*, 126.

SHERIFF. See ASSIGNMENT FOR BENEFIT OF CREDITORS, 12.

1. A sheriff is estopped from showing that goods, left with a receiptor who claimed to be the owner, did not belong to the judgment-debtor, where he has obtained a judgment for their value for non-delivery against such receiptor. *The People ex rel. Knapp et al. vs. Reeder, Sheriff*, 57.
2. In making a levy should allow for the sacrifice of public sale. *French vs. Snyder*, 312.
3. In an action against a sheriff for an insufficient levy he should show that he used reasonable diligence as to the sufficiency of the property he took. *Id.*
4. In such action the measure of damages is the actual loss to the plaintiff by the sheriff's neglect. *Id.*

SHERIFF'S SALE. See LIEN, 3.**SHIPPING.** See ADMIRALTY, 5; LIEN, 2; MORTGAGE, 41, 43.

1. Seaman under void articles may leave vessel and recover wages to the time. *Roberts vs. Knights*, 697.
2. Articles held to be void. *Id.*
3. Reimbursement of advance where the ship is lost. *Benner vs. Ins. Co.*, 316.
4. The statute of the United States requiring conveyances and mortgages

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of vessels to be recorded, applies only to such as have been enrolled, registered, or licensed under the laws thereof. *Veazie vs. Somerby*, 64.

5. The record of a mortgage or conveyance of a vessel must be made in the district of the last registry and enrolment, though not the home port of the vessel. *Potter vs. Fish*, 187.

SOCIETY. See **UNINCORPORATED SOCIETY.****SPECIE.** See **BILLS AND NOTES**, 25; **GROUND-RENT**.**STAMP.**

1. The cost of the stamp required by the U. S. Internal Revenue Act, to be affixed to a deed, is properly a part of the expense of making the deed, and is to be paid by the party paying for the deed. *McCreedy vs. Callahan*, 241.

2. It being the custom in Philadelphia, in the absence of express contract, for the purchaser to pay for the deed, he is also chargeable with the cost of the stamp. *Id.*

3. Who to pay for stamp on deed. *Note to McCreedy vs. Callahan*, 242.

4. Whether duty payable on deeds of marriage settlement, &c., for a nominal consideration. *Legal Miscellany*, 116.

STARE DECISIS. See **COURTS**, 4, 8.

A question repeatedly decided is no longer open for discussion. *Wright et al. vs. Sill*, 54.

STATUTES. See **CONSTITUTIONAL LAW**, 44; **USURY**, 3, 4.

Held directory. *People vs. Hartwell*, 764.

STATUTE OF FRAUDS. See **ASSUMPSIT**, 2; **CONTRACT**, 3, 5; **VENDOR**, 3, 10, 11.

1. Where it appears on the face of a bill, that an agreement concerning an interest in lands is in parol, the defence of the Statute of Frauds may be taken advantage of on demurrer. *Randall vs. Howard*, 55.

2. A. sold notes and mortgage, and verbally guaranteed both notes and security. Warranty held not within the statute. *Huntingdon vs. Wellington*, 182.

STOPPAGE IN TRANSITU. See **VENDOR**, 2.**STREAMS.** See **WATERCOURSE**.

1. The internal streams of a state, above the tide and above boat navigation, are in some sense public highways for the floating of logs, in those parts of the state where this species of transportation is of indispensable necessity to, and has been long acquiesced in by, the inhabitants. *Veazie vs. Dwinel*, 715.

2. In regard to such streams, those who erect and use mills thereon are bound to make and use such mills with reference to the correlative right in the owners of timber land adjoining such streams, to float the same to market; and any unreasonable obstruction of this latter use of the stream will be a common nuisance. *Id.*

SUBROGATION. See **MORTGAGE**, 3, 15, 16.**SUNDAY.** See **INSURANCE**, 43.

Replevin may be maintained for goods sold on. *Tucker vs. Mowrey*, 766.

SURETY. See **BILLS AND NOTES**, 14.

1. Where a surety signs upon the assurance that the principal will also procure two other persons specified, to sign the bond before he delivers the same, which he fails to do, but this is wholly unknown to the obligee at the time he accepts the bond, such surety is bound to perform the obligation. *Fork County Ins. Co. vs. Brooks*, 399.

2. Where the third surety upon a bond signs under the belief that the former signatures are genuine, but one of them is, in fact, forged by the

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principal in the bond, who erases such forged signature before he delivers the same to the obligee, who is wholly ignorant of these facts at the time, such surety cannot defend against the obligation. *York Co. Ins. Co. vs. Brooks*, 399.

3. Effect of signing on the faith of having co-sureties which are never obtained. *Note to Insurance Co. vs. Brooks*, 402.

4. How far surety may be estopped by his act from showing that his signature was fraudulently obtained. *Id.*

5. Alteration of times of paying interest after execution of a note discharges surety. *Dewey vs. Reed*, 188.

6. Where E. signed an application of C.'s to be supplied with gas-light and a meter on certain premises, as surety: it was held, that he was only liable for gas supplied to C., and not for that furnished to a subsequent tenant. *Manhattan Gas-Light Co. vs. Ely*, 60.

SURVIVING RELATIVES, ACTION BY. See NEGLIGENCE, 8.**SWAMP LANDS.**

Character of the grant by Congress to Illinois—policy of the state—rights of purchasers, &c. *Supervisors vs. Burchell*, 631.

TAXES. See WILD LANDS.

An action will not lie to restrain the collection of taxes, on the bare ground of the assessment being illegal. *Susquehanna Bank vs. Board of Supervisors*, 56.

TENANT IN COMMON.

1. Purchase by tenant in common of an outstanding title, enures to the benefit of his co-tenants. *Rothwell vs. Dewees*, 50.

2. The rule applies to the husband of one of the tenants in common. *Id.*

3. A deed by a tenant in common of "sixty-four rods being part of" the lot held in common, passes no title in common; nor in severalty without possession taken under it of the part claimed. *Phillips vs. Tudor*, 184.

4. Where a tenant in common erects a building upon a portion of the land, it is such an exclusive appropriation to his own use as will entitle his co-tenant to maintain trespass. *Bennett vs. Clemence et al.*, 121.

5. Denial of rights of co-tenant by tenant in common of personality is conversion and will sustain assumpsit. *Figuet vs. Allison*, 766.

TENDER.

Where the mortgagor's assignee offered to pay the mortgage-debt, at the same time producing the money in a pocket-book, a part of which was in bank notes, and the holder of the mortgage refused to receive it, without making any objection to the amount or kind of money, the tender was valid. *Brown vs. Simons*, 154.

TIMBER.

City ordinance of New Bedford in regard to. *Briggs vs. A Light-Boat*, 566.

TORT. See ACTION, 2; HUSBAND AND WIFE, 27-31.**TRESPASS.** See ASSIGNMENT FOR BENEFIT OF CREDITORS, 10; PARTNERSHIP, 7, 8; TENANT IN COMMON, 4.**TRIAL.**

Points presented on trial which are true but not applicable should be disaffirmed on that ground. *McKnight vs. Ratcliff et al.*, 310.

TROVER. See CORPORATION, 7.

1. Where the pledgee of dock warrants as security sold the property in dock the day before the loan was due and delivered the warrants the next day, it was a conversion although the pledger was bankrupt and would not have redeemed the warrants. *Johnson vs. Stear*, 753.

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2. *Per ERLE, C. J., BYLES and KEATING, JJ.* The measure of damages was the loss actually sustained by the pledger. *Id.*
3. *Per WILLIAMS, J.* It was the value of the goods at the time of the conversion. *Id.*

TRUSTS AND TRUSTEES. See AGENT, 8; CORPORATION, 4; COURTS, 1; SECURITY, 1; SET-OFF.

1. A sale and conveyance by a trustee, of the trust property, where he becomes the purchaser, is not void, but is capable of confirmation by the act of the *cestui que trust*. And a title acquired by a subsequent *bona fide* purchaser without notice, is good. *Johnson vs. Bennett*, 123.

2. Though the trustee may have acted *bona fide* yet courts will open the sale, if the *cestuis que trust* are not satisfied with it. *Id.*

3. A *cestui que trust*, having assented to a sale made by the trustee, by accepting his share of the proceeds, cannot maintain ejectment, for his share of the land, on the ground that the sale was void. *Id.*

4. A purchase on behalf of another, must be held to be in trust for the principal. *Rothwell vs. Dewees*, 50.

UNINCORPORATED SOCIETY.

1. A deed of land to an organized and acting, though unincorporated, religious society, vests a valid title in the grantees as a body, and does not create a tenancy in common among the individuals who compose the society. *Hamblett and Wife vs. Bennett*, 317.

2. Rights of the committee in charge of such property, and of members of the society. *Id.*

UNITED STATES NOTES AND STOCKS. See CONSTITUTIONAL LAW, II.

USURY. See EXECUTOR, 1.

1. Where a contract is simply for a loan of money, any profit made or loss imposed upon the borrower in addition to the legal rate of interest, is usury. *Buttrick vs. Harris*, 112.

Where, however, an addition is made for the price of exchange, not for the loan or forbearance, but as compensation for accepting payment in a place less convenient, or where money is less valuable, the contract will be lawful. *Id.*

3. A statute authorizing a party who has paid usurious interest to sue for the excess within one year is *cumulative*, and does not take away the right of the borrower to an action at common law. *Porter vs. Mount et al.*, 493.

4. A provision in such statute, that if the party paying usury shall not bring his action within one year, another person (such as a superintendent of the poor) may then sue for and recover the amount paid for usury within three years after such first year, does not *absolutely* suspend the right of action of the party paying the usury, but he may still sue at any time before suit actually brought by such public officer. *Id.*

5. Dictum of SPENCER, C. J., in *Wheaton vs. Hibbard*, 20 Johns. 290, overruled. *Id.*

6. A married woman is liable in an action for taking usurious interest, and judgment may be given against her separate estate as if she were sole. *Id.*

7. Taking of accommodation note from payee for less than its face is usurious, even without notice. *Whitten vs. Hayden*, 696.

VENDOR AND VENDEE. See HUSBAND AND WIFE, 26-33; STAMP.

1. Omission to discover want of signature to bill of lading is mistake of fact for which sale may be rescinded, and agent of vendor may yield to the rescission. *Quimby vs. Carr*, 697.

2. Stoppage of goods *in transitu* does not rescind the contract, and vendors are entitled to *pro rata* distribution out of the insolvent estate. *Patten's Appeal*, 573.

3. A contract for sale of goods is not taken out of the Statute of Frauds by

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payment of part of the purchase-money, unless at the time of the sale. *Bissell vs. Balcom*, 253.

4. Where a portion of goods sold have been returned and reaccepted at a reduced price, the original sale is not thereby avoided so as to discharge a guarantor. *Rice vs. Filene*, 249.

5. Where goods are sold by sample, and both sample and goods contain defects, there is no implied warranty against the defects. *Dickinson vs. Gay*, 506.

6. Where the equitable owner of a thing permits the legal owner to retain possession of the documentary evidence of title, and it is sold to a third party, the burden of proof is on the equitable owner to show that the purchaser had notice of his rights. *Calais Steamboat Co. vs. Scudder*, 52.

7. In New York, the rule of *caveat emptor* is subject to the exception that a warranty of title in the vendor is implied, where he is in possession at the time of sale. *Scranton vs. Clark*, 124.

8. The possession of the vendor is the foundation of the implied warranty. *Id.*

9. Sale of personal property without disclosure of defective title—waiver of the fraud by purchaser. *Sweetman vs. Prince*, 570.

10. Plucking a handful of grass and delivering it to a purchaser, on a sale of the grass, is not such a constructive delivery, as will pass the title against third persons. *Lamson vs. Patch*, 64.

11. Where a vendor sold sufficient goods "now on my premises," to pay a sum of money advanced by plaintiff, and delivered a specific mass more than enough to pay the amount, but they were not removed, and the premises were subsequently sold, with notice of the facts and subject to plaintiff's claim, the legal title and ownership of the goods passed to the plaintiff. The transaction was an executed sale in the nature of a mortgage, and the purchaser with notice had no title as against the plaintiff, and could convey none to a third party even without notice, and the original transfer was valid without filing as a chattel mortgage. *Wooster et al. vs. Sherwood*, 57.

12. Showing the pieces of several machines and offering to put one together, is not a delivery to entitle the plaintiffs to recover the contract price. *Ganson vs. Madigan*, 508.

13. *Contra*, if they had set apart a machine for defendants. *Id.*

14. Failure to deliver proper quantity of goods is a bar to an action for the price of goods delivered. *Cattlin vs. Tobias*, 571.

15. Vendee may use the goods as delivered without waiver of defence for breach of contract. *Id.*

16. Vendor having informed the agent sent to buy goods of his price, and the agent, though he had no authority to make a bargain, having taken away the goods, vendor may recover the price named. *Booth vs. Bierce*, 254.

17. Vendor not bound to abandon his lien until purchase-money paid, though he may have accepted new collateral security. *Johnson vs. Scott*, 634.

VERBAL DECLARATIONS OF DECEASED PERSONS AS EVIDENCE, 641.

VESSEL. See ADMIRALTY, 5; LIEN, 2; MORTGAGE, 41, 43; SHIPPING.

WARRANTY. See BILLS, 23, 24; ESTATE, 3; ESTOPPEL, 3; HOMESTEAD, 1; INSURANCE, 4, 37, 38, 41; STATUTE OF FRAUDS, 2; VENDOR, 4, 5, 7, 8.

WATERCOURSE. See STREAM.

1. If the owners of a dam on a watercourse, by means of their dam, obstruct the natural drainage from the land of another, to his actual injury, they are liable to him therefor, although his land is not situated upon the watercourse, unless such obstruction was caused by them in the reasonable use of their own land or privilege. *Bassett vs. Salisbury Manufacturing Co.*, 223.

2. What is a reasonable use is a mixed question of law and fact. *Id.*

3. Rights of proprietors in subterranean waters. *Note to Bassett vs. Salisbury Co.*, 238.

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4. Twenty years' use of the water of a stream in a particular way is evidence of a right thus to use the water. *Burnham vs. Kempton*, 380.
5. The same proof of user which establishes the right is equally conclusive in establishing the limitation of that right. *Id.*
6. In action for swelling back water plaintiff can only recover for damages for six years prior to the suit, whether the statute of limitations was pleaded or not. *Brown vs. Bush*, 573.
7. A natural or artificial "stone row" is such a dam as will acquire a right by lapse of time. *Id.*
8. Instrumental measurement of back water must yield to actual facts. *Id.*

WAY.

- Acquisition by user by several persons in succession. *Leonard vs. Leonard*, 568.

WILD LANDS.

- Title of purchaser at tax sale. *Pierce vs. Hall*, 503.

WILL. See **MENTAL UNSOUNDNESS**; **SENILO DEMENTIA**.**I. Of the Making and Proving of the Will.**

1. Want of capacity cannot be proved by events subsequent to the making of the will. *Clarke vs. Davis*, 375.
2. Influence to vitiate an act must amount to coercion equivalent to forc and fear. *Id.*
3. Declarations of deceased are admissible to prove undue influence. *Moross vs. Cicotte*, 765.
4. Mere absence from the state of an attesting witness does not authorize proof of the will by proving handwriting. *Stow vs. Stow*, 375.
5. In New York, a will, whether it disposes of real or of personal property, speaks as of the time of the testator's death. *McNaughton et al. vs. McNaughton*, 502.
6. What are assets where widow elects to take against the will. *Plympton vs. Plympton*, 374.
7. Effect of such election on the provisions of the will as to other parties. *Id.*

II. Construction of Wills.

8. Courts are astute in finding exceptions to the rule that a devise of lands without words of limitation confers a life estate only. *King vs. Ackerman*, 50.
9. Devise of "goods, chattels, rights and credits, and effects," does not pass realty. *Brown vs. Furman*, 633.
10. Where a testator divided the residue of his estate between his brother W., the children of his sister H., and the daughter of his brother J., in equal proportions: it was held, that the legatees were to take "per capita." *Lee, Executor, vs. Lee*, 59.
11. Where to a devise of land without words of limitation a provision is added that the devisee may do therewith as he pleases, or is directed to pay debts or a sum in gross, he takes a fee. *King vs. Ackerman*, 50.
12. A court may look beyond a will to explain an ambiguity as to the person or property, but not to enlarge an estate. *Id.*
13. What was held void as creating a perpetuity. *Fosdick vs. Fosdick*, 121.
14. Construction of word "heirs". *Porter's Appeal*, 575.
15. Construction of. *Carter vs. Hunt*, 252.

WITNESS. See **ACCOUNT RENDER**, 1; **AGENT**, 3; **ERROR**, 3; **HUSBAND AND WIFE**, 39; **WILL**, 4.

- Objection to competency must be made before examination. *Patterson vs. Wallace*, 309.